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The Regulation Of Dredging

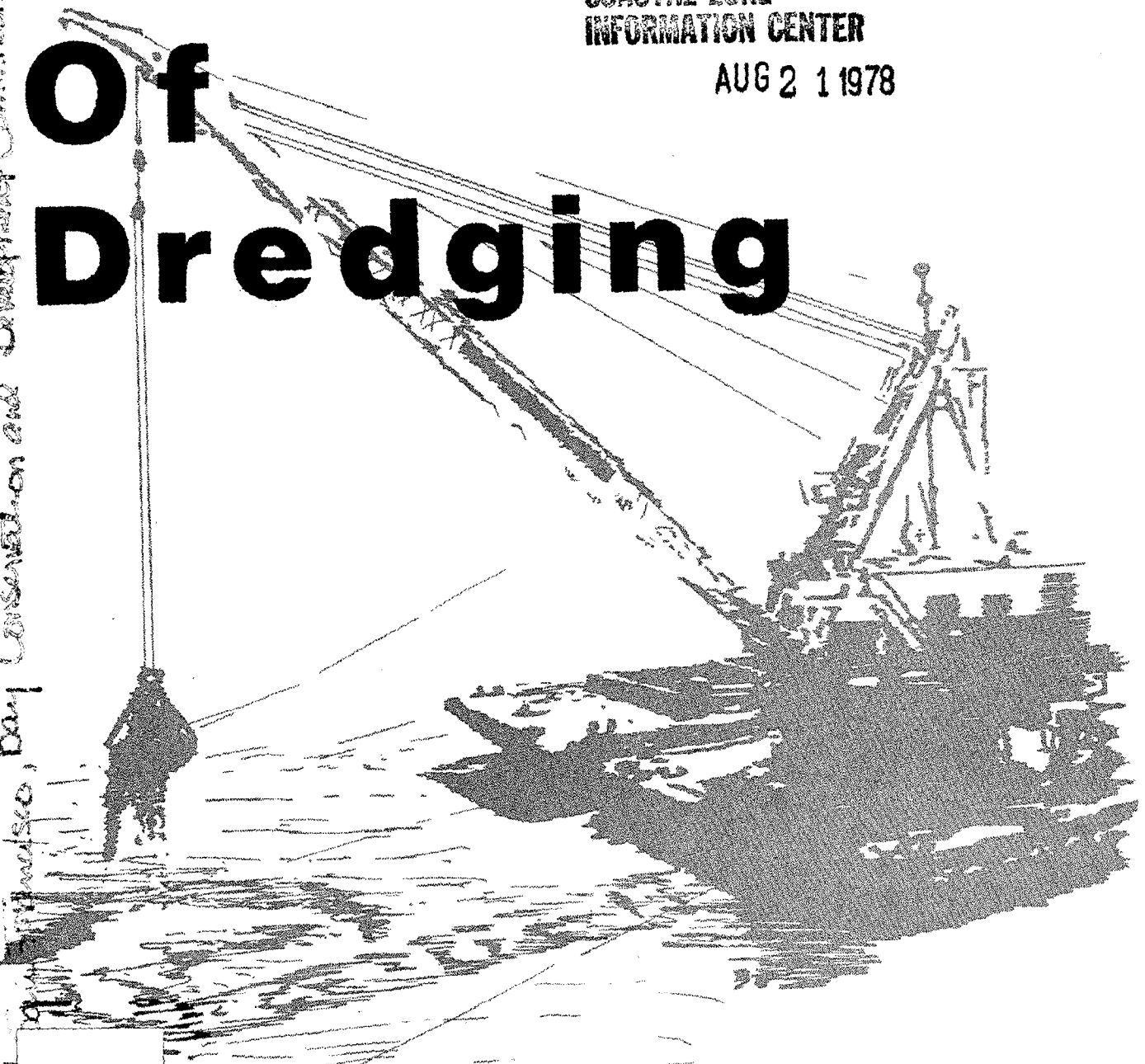
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San Francisco Bay Conservation and Development Commission

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THE REGULATION

OF

DREDGING

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SAN FRANCISCO BAY CONSERVATION

AND DEVELOPMENT COMMISSION

STAFF REPORT

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This report, prepared pursuant to an interagency agreement between the San Francisco Bay Conservation and Development Commission and the State Resources Agency, was approved by a unanimous vote of the Commission after a public hearing on January 15, 1976. The authorization and funding for the study is provided for by Senate Bill 2418 authored by Senator Milton Marks in the 1973-1974 legislative session.

California. San Francisco Bay Conservation and Development Commission

KFC 792.02 R4 1976

11794264

DEC 23 1976

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: 557-3686

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January 23, 1976

Dr. Claire T. Dedrick
Secretary for Resources
Resources Agency
1416 Ninth Street
Sacramento, California 95814

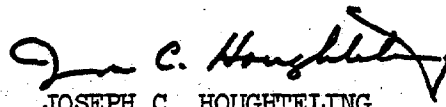
Dear Secretary Dedrick:

It is a pleasure to transmit to you the enclosed report, "The Regulation of Dredging." This report was prepared pursuant to an interagency agreement, dated December 5, 1974, with your Agency. The Commission held two public hearings and received numerous comments from the public, interested parties, and several State and Federal agencies. Copies of the minutes of the Commission's hearings and written comments on this report are included as Appendix K. The report was approved for transmittal to you by a unanimous vote of the Commission on January 15, 1976.

Your support during the preparation of the report and interest in carrying out its recommendations are most appreciated. Fulfillment of these recommendations, most of which can be done administratively, will be of public benefit by clarifying and expediting the process of obtaining permits for dredging.

Please let me know if the Commission can be of further assistance.

Very truly yours,


JOSEPH C. HOUGHTELING
Chairman

Enc.

JCH/mc

CONTENTS

	Page
ACKNOWLEDGMENTS	xiii
FOREWORD	xv
SUMMARY	xvii
CHAPTER I. INTRODUCTION	1
CHAPTER II. PROBLEMS AND ANALYSIS	8
Duplicated Activities	8
a. Multiplicity of Agencies	9
1. Federal and State Regulatory Structure	9
2. Legislative Approach--the Concept of Specialization	10
3. Recommendations Regarding Multiplicity of Agencies	10
b. Duplication of Reviews	11
1. Multiple Land Use Reviews	11
2. Multiple Fish and Wildlife Reviews	12
3. Water Quality Review	13
4. Multiple Environmental Document Preparation	14
5. Recommendations Regarding Duplication of Reviews	15
c. Duplication of Procedural Steps	16
1. Multiple Comment Solicitation	16
2. Independent Processing of Applications	17
3. Application Forms Unique to Each Agency	18
4. Duplication of Public Hearings	18
Ambiguous Requirements	19
a. Length of Time to Process Applications	19
1. No Sanctions for Delays	21
2. Workload and Backlogs	26

	Page
b. Guidance and Consistency of Agency Evaluations	27
1. Formal Policies, Plans, and Decision-Making Criteria	27
2. Administrative Regulations	32
3. California Environmental Quality Act (CEQA) Guidelines	34
Unnecessarily Repetitive or Detailed Regulation	35
a. Minor Projects	35
b. Maintenance Dredging	39
CHAPTER III. COORDINATION EXPERIMENT EVALUATION	41
Operations of the Coordination Experiment	41
Evaluation of the Coordination Experiment	46
CHAPTER IV. RECOMMENDATION IMPLEMENTATION	53
Formalization of Policies and Procedures	54
Interagency Relations	61
Residual Implementation Elements	64
Federal Agency Action	66
Conclusion	68

F I G U R E S

	Page
Figure 1 Location and Nature of Dredging Activity--San Francisco Bay System	2
Figure 2 Jurisdictional Boundaries of Agencies in the Bay Area	5
Figure 3 Size Classification of Dredging Projects 1/70 to 6/75	B-3

	Page
Figure 4 Agency Jurisdiction--Regional Coastal Commissions	D-7
Figure 5 Agency Jurisdiction--Regional Water Quality Control Boards & Reclamation Board	D-10
Figure 6 Agency Jurisdiction--Department of Fish and Game	D-24
Figure 7 Agency Jurisdiction--Corps of Engineers	D-30

T A B L E S

Table I Agency Time Limits	22
Table II Existence of Formal Policies to Guide Decisions on Permit Applications	28
Table III Existence of Administrative Regulations for Dredging	33
Table IV Existence of Simplified Procedures for Processing	36
Table V Average Processing Times	45
Table VI Summary of Recommendations	55
Table VII Average Annual Number of Applications and Volume of Dredging by Activity	B-2
Table VIII Ports and Marinas Surveyed	J-1

A P P E N D I C E S

Appendix A Senate Bill No. 2418, Chapter 1274, and Interagency Agreement	A-1
Appendix B Applications and Projects	B-1
Appendix C Legal Regulations and Environmental Impact Requirements	C-1
Appendix D Agency Procedures	D-1
Appendix E Order Adopting Regulations of the Resources Agency	E-1
Appendix F Information for Obtaining Authorization for Dredging	F-1

	Page
Appendix G Application for Dredging Permit	G-1
Appendix H Dredging Application Process Records	H-1
Appendix I Out-of-State Coordination Systems	I-1
Appendix J Questionnaire Returns	J-1
Appendix K Minutes of Public Hearings and Written Comments	K-1

ACKNOWLEDGMENTS

This report was prepared by the following members of the San Francisco Bay Conservation and Development Commission staff: L. Thomas Tobin, Staff Engineer; Philip S. Weismehl, Staff Attorney; Linda L. Roschel, and Joseph Nicholson, Junior Staff Analysts; Michael J. Seaman, Diane Nastich, Fred G. Danielson, and Mari G. Collins, Graduate Student Assistants; Alan B. Hislop, Research Writer; and Lola E. Chirgwin, Stenographer.

Staff members of other agencies participating in the regulation of dredging or concerned with the need for dredging were also involved in this study. Their insight was extremely important in understanding the perspectives of both the regulatory agencies and those regulated, and in evaluating the coordination experiment.

Two groups were consulted for advice on preliminary drafts of this report. Members of these groups and their affiliation are listed below. Their efforts are gratefully acknowledged.

DREDGE ADVISORY GROUP

Michael Cheney, California Marine Affairs
and Navigation Conference;
Joseph E. Duda, Dredging Contractors'
Association;
Norm Harvey, State Lands Division;
Richard Kroger, U. S. Fish and Wildlife
Service;
Fred Minkler, National Marine Fisheries
Service;

William H. Pierce, Environmental
Protection Agency;
Robert C. Riddle, U. S. Army Corps
of Engineers;
Michael Rugg, Department of Fish
and Game;
James C. Wolfe, U. S. Army Corps
of Engineers; and
Dr. Teng-Chung Wu, San Francisco Bay
Regional Water Quality Control Board

ADVISORS ON SENATE BILL 2418 STUDY

Ronald R. Brill, San Francisco Bay Area
Council;
Frank Goodson, Resources Agency;
Richard M. Farrell, Marina and Recreation
Association;
William T. Davoren, California Coastal
Zone Conservation Commission;
Paul DeFalco, Environmental Protection
Agency;
Fred Dierker, San Francisco Bay Regional
Water Quality Control Board;
Joseph E. Duda, Dredging Contractors'
Association;
Col. H. A. Flertzheim, Jr., U. S. Army
Corps of Engineers;
William F. Northrop, State Lands Commission;

Jack Fraser, Department of Fish and
Game;
Robert Langner, California Marine
Affairs and Navigation Conference;
William Leet, National Marine Fisheries
Service;
Senator Milton Marks, Senate Select
Committee on Maritime Industry;
Cmdr. Phillip Parisius, U. S. Navy;
Dr. R. Ritschard, Save San Francisco Bay;
Felix Smith, U. S. Fish and Wildlife
Service;
Frank Torkelson, Department of Naviga-
tion and Ocean Development; and
Professor Eugene Lee, Institute of
Governmental Studies

FOREWORD

Governor Edmund G. Brown, Jr., in his inaugural address, expressed concern over the apparent conflict between the need to provide the physical development and services that society requires and the necessity to achieve and maintain a healthy environment. "For our part, the State must cut through the tangle of overlapping environmental and land use rules which delay needed construction. In the long run, the air, the water, and the land will be protected, but only by clear rules which are fairly enforced and without delay."

It is toward this objective that this study is directed.

SUMMARY

In 1974, the State Legislature directed the Resources Agency to study dredging regulation and establish temporary procedures for an experimental "one-stop" coordination system for specified dredging projects within the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC). The Agency was to report to the Legislature by February 1, 1976, identifying the problems in permitting procedures, making recommendations on ways to speed up the process, and advising the Legislature on the statewide applicability of the experimental procedures. By interagency agreement BCDC undertook these duties.

Three groups of related problems were identified in the regulatory process. First, repetitive steps occur in the application process that slow it down. Second, the requirements that applicants must meet are sometimes unclear. Third, some regulation appears to be unnecessarily repetitive or detailed. Even minor, regularly recurring maintenance dredging projects must often go through the entire regulatory process each time they come up.

The BCDC's permit coordination experiment provided much of the information that has gone into this report. The number of applications thus far submitted for coordination is small, but the experiment appears to show that a rigid coordination system is not the answer to the regulatory problems. Other sources of information came from an examination of the State and Federal laws and regulations that pertain to dredging, from the responses to a questionnaire sent to many ports and marinas on the Pacific Coast, and from interviews with agency personnel who handle dredging applications.

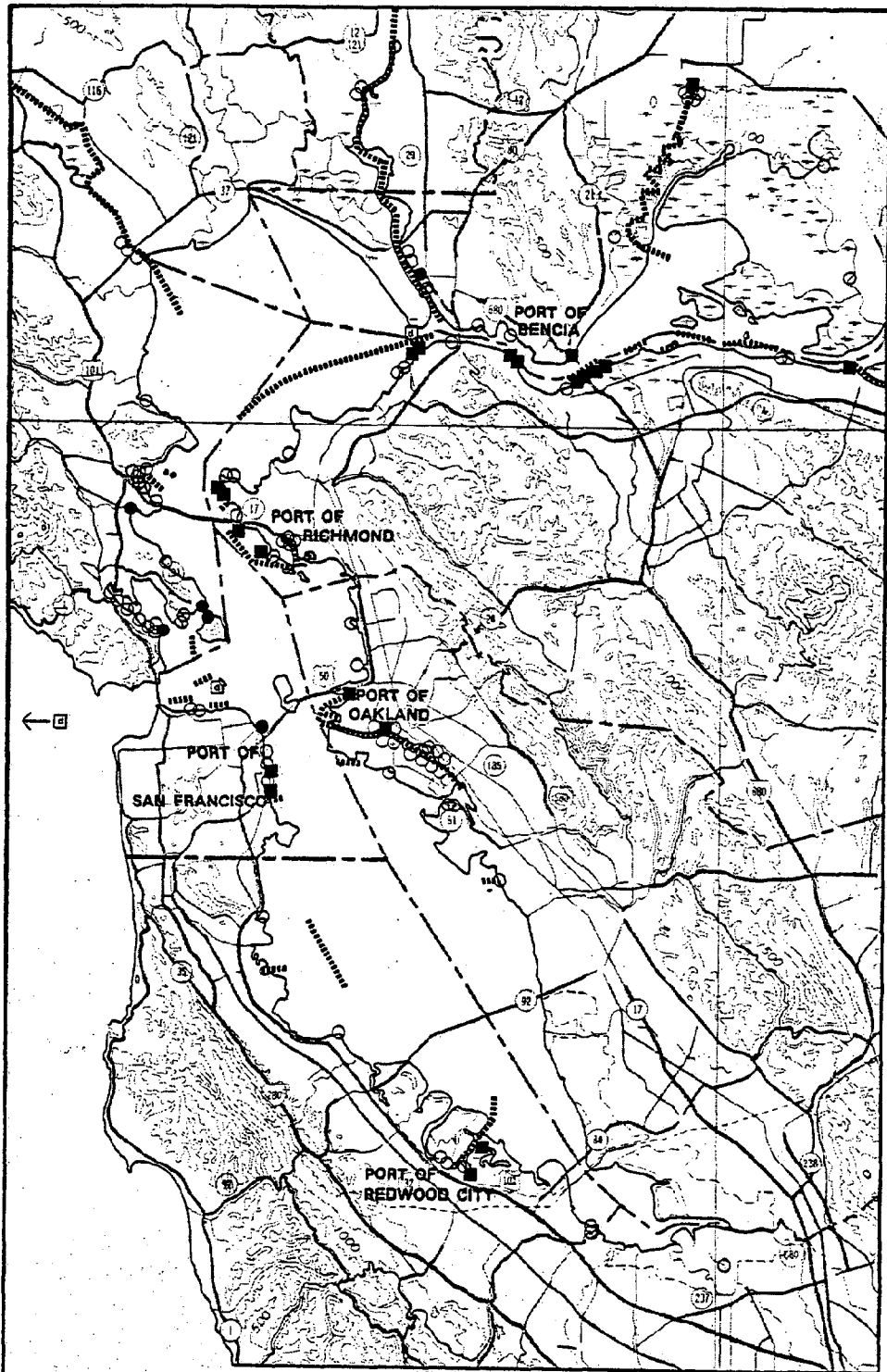
For this reason, the recommendations made in the report are generally directed toward the modification of existing policies and procedures, most of which can be carried out by the agencies themselves without legislative action. Table VI, on page 55, provides a concise summary of the recommendations. Each agency should establish and adhere to clear criteria for decision-making, and time limits for processing an application should be more rigorous. Relations among State agencies and between State and Federal agencies can be improved, and existing agencies should be designated as "principal agencies" to serve as the focal points of all State dredging permit activities. This approach to modifying the regulatory process will simplify the regulation of dredging without jeopardizing natural resources or environmental protection.

CHAPTER I. INTRODUCTION

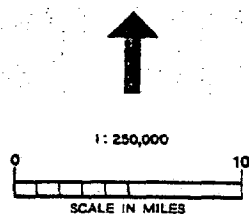
San Francisco Bay is both a great natural resource and the site of a vast amount of commercial and recreational activity. The Bay's commercial importance for the economy of the western United States is balanced by its incomparable scenic and recreational value and biological productivity. Continuing use of the Bay, however, requires dredging. For one thing, the Bay is too shallow in many places for harbors or even recreational boating without dredging. In addition, siltation--the deposit of silt, sand, and clay in the Bay--is a constant problem. Every year, the Sacramento and San Joaquin river systems carry some eight to ten million cubic yards of sediment into the Bay. Although about one-third of this material is carried out to sea, what remains does not simply settle to the bottom. Every day, waves and currents shift huge quantities of sediment from the Bay's extensive mudflats, some of which settles in the more sheltered, deeper areas of the Bay.

Dredging is therefore necessary to maintain ports, military bases, commercial fishing facilities, navigation channels, and marinas. New shoreline projects, such as the construction of shipping or ferry terminals, public works activities, and the removal of sand and shells for sale, may also require dredging, and these new projects almost always require maintenance dredging on a regular basis. Figure 1 shows the locations of several recent dredging projects.

New dredging can have a significant effect on land use. For example, if a port is dredged to accommodate larger vessels than it could formerly serve, the nature of related industrial or commercial activity may be



Location and Nature of Dredging Activity — San Francisco Bay System —



- Commercial Port/Petroleum Transfer Pier
- Marina/Launching Ramp
- Ferry Terminal
- Aquatic Disposal Site
- COE Maintained Channel

Figure 1

changed. There may even be indirect effects on land traffic, industrial growth, and air pollution. Maintenance dredging, while not raising new land use issues, differs from other maintenance activities (like resurfacing a road) by the great volume of material involved and its possible effects on resources.

Studies conducted during the preparation of the San Francisco Bay Plan showed that dredging and spoiling--the disposal of the dredged material--could damage marine organisms, marshes, mudflats, and beaches. It is also possible that dredging could strip the watertight seal from fresh water supplies beneath the Bay, allowing saltwater intrusion. Dredging done near a pier could adversely affect its stability and safety. These facts and others clearly indicate that dredging must be regulated to avoid, or at the very least to minimize, its potentially harmful effects.

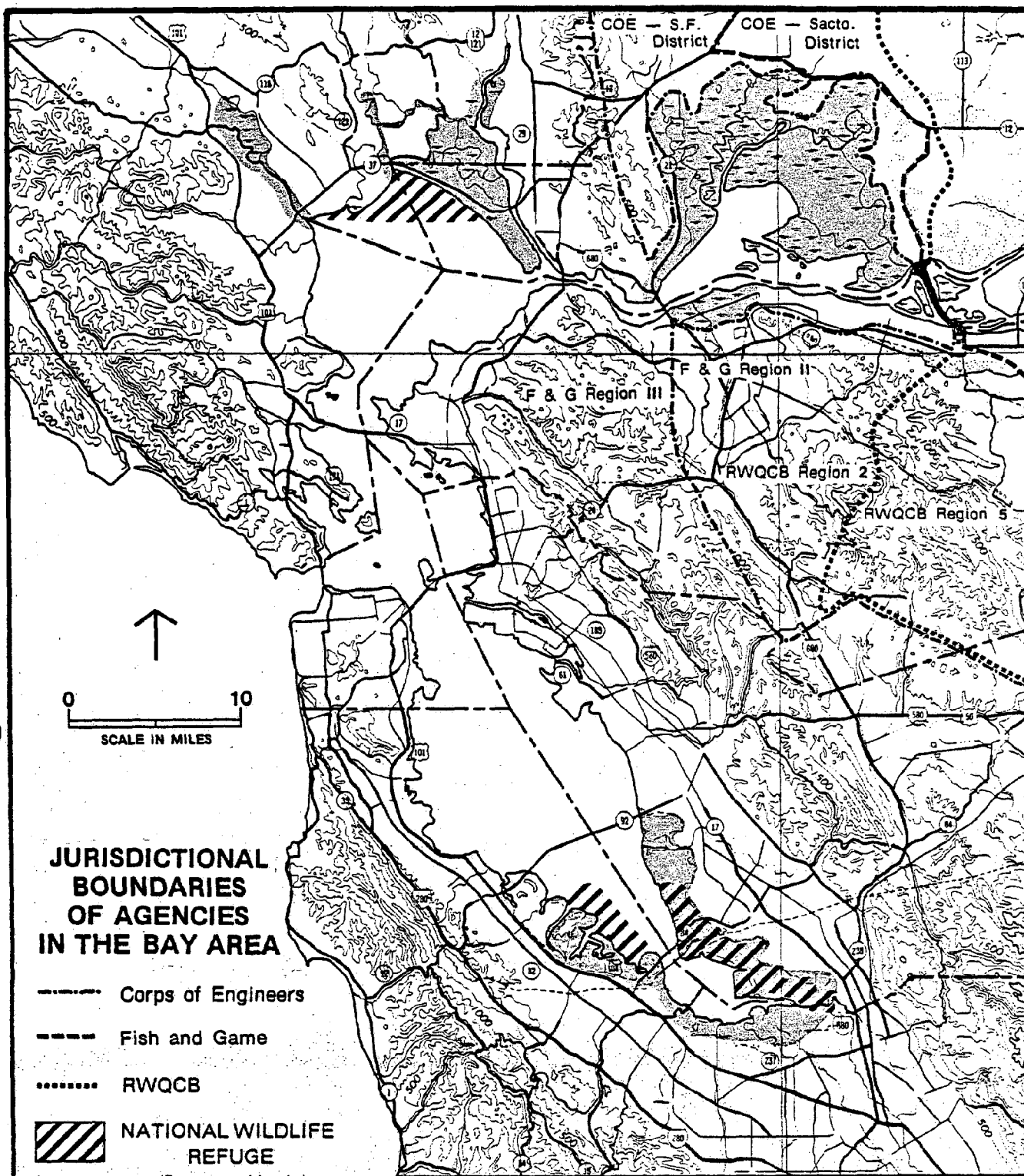
The Federal Government has regulated dredging for over seventy-five years. The Federal Rivers and Harbors Act of 1899 gave the U. S. Army Corps of Engineers (Corps) permit jurisdiction over dredging (and other activities) in waterways used for navigation, including San Francisco Bay. For many years the Corps' primary role was ensuring that navigable waterways remained open to waterborne commerce. In recent years, however, as public awareness of environmental issues and resources management has become more prominent, both the Federal and State Governments have increased their participation in the regulation of dredging. The result has been a closer scrutiny of dredging projects. The State Legislature has responded to these concerns by charging several agencies with specific responsibilities. For example, in 1967, the State Water Resources Control Board and the Regional Water Quality Control Boards were strengthened to protect water quality. In 1969, the San Francisco

Bay Conservation and Development Commission was made a permanent State agency, with the power to regulate dredging in San Francisco Bay. In addition, the Corps' jurisdiction has been redefined to include wetlands and areas not traditionally used for navigation. Figure 2 shows the jurisdictional boundaries for Federal and State agencies regulating dredging in the Bay Area.

Early in 1974, the California Senate Select Committee on Maritime Industry considered the regulatory aspects of dredging. The Committee, chaired by Senator Milton Marks, received testimony from the dredging industry that the process of obtaining permission to dredge involved too many agencies and too much time and money. According to the Committee's former consultant Anthony Taormina, "Applicants must often wait from thirteen to twenty months before receiving the necessary approvals of maintenance dredging projects." The Committee noted that many applicants had difficulty understanding the complex permit application process.

Those concerned with the Committee's investigation recognized that the complexity and delay grew not by agency design but because concern with resources management and environmental protection has increased the regulations governing dredging. Thus, although the regulatory process serves the goals set forth by the law, it too often does so in a way which may appear time-consuming and confusing.

The Committee did not propose basic regulatory changes, however, because it needed more information about the problems of permit applications for dredging and how they might be alleviated without sacrificing environmental safeguards. Instead, it proposed a study of dredging regulation. This proposal, Senate Bill 2418 (Marks), became law on January 1, 1975 (enclosed in Appendix A). Under this legislation, the State Resources Agency was required to establish temporary



BCDC jurisdiction and area of dredging permit coordination generally lie within a line 100 ft. inland of Bay shoreline and including those areas shaded grey.

AGENCIES WITH STATEWIDE JURISDICTION

STATE

The Resources Agency

State Lands Commission

State Water Resources Control Board

FEDERAL

U.S. Fish and Wildlife Service
(Dept. of Interior)

National Marine Fisheries Service
(Dept. of Commerce)

Environmental Protection Agency

Figure 2

procedures for an experimental "one-stop" coordination system intended to speed the processing of permit applications for specified dredging projects within the jurisdiction of BCDC. By February 1, 1976, the Resources Agency was to report to the Legislature, identifying the problems in permitting procedures, making recommendations concerning ways to expedite the process, and advising the Legislature on the feasibility of the statewide application of the new procedures. By interagency agreement, the Secretary for Resources delegated to BCDC the responsibility to carry out this law. A copy of the interagency agreement is enclosed in Appendix A. Although the focus of this report is on procedures of agencies regulating within the same area as the BCDC, the recommendations are intended to apply to dredging regulatory procedures throughout California. Nothing was found to indicate that the regulatory problems were unique to the Bay Area and therefore any recommendations concerning them should be relevant to other areas as well.

The recommendations offered in this report are based on information derived from a variety of sources. First, the State and Federal laws and regulations that pertain to dredging were examined. A questionnaire was sent to the managers, directors, or owners of commercial ports, marinas, and private terminals in California, Oregon, Washington, and Alaska, asking for specific information concerning dredging at their facility. Eighty per cent of those surveyed responded. A copy of the questionnaire and a brief analysis is in Appendix J. In addition, interviews were conducted with all agency personnel handling dredging regulation for San Francisco Bay, as well as with dredgers and facility operators. A survey was made of the regulatory procedures of the Reclamation Board and each district of multiple district agencies--California Coastal Zone Conservation Commission, Regional Water

Quality Control Board, Department of Fish and Game, and Corps of Engineers--to determine how their procedures varied from district to district. The coordination experiment that the BCDC conducted was itself a valuable source of information about the regulatory process.

The report consists of four chapters and eleven appendices. Chapter II describes the problems with the regulatory process that were identified during the course of preparing the report and briefly states our proposals for remedying or mitigating them. Chapter III evaluates the experiment with permit coordination. Chapter IV amplifies recommendations contained in the two preceding chapters and suggests methods for implementing them.

This report supersedes an earlier study, "The Regulation of Dredging, Part I," which described the legislative basis of dredging regulation and the procedures of the agencies that regulate dredging. Appendices B, C, and D reproduce much of the descriptive material from the earlier study in a slightly amended form that includes information about the regulation of dredging in areas other than the Bay. Any reader unfamiliar with dredging and the regulatory processes affecting it will find reading these appendices helpful. Those who are familiar with these matters may want to use the appendices for reference.

CHAPTER II. PROBLEMS AND ANALYSIS

This report is directed at identifying problems in the procedural aspects of dredging regulation rather than the policies or goals for which that regulation is undertaken. In general, it has been found that the regulatory goals of the State and Federal agencies involved are being met, with project screening occurring in a manner to ensure conformance with legislative mandates. Applications are ultimately processed to conclusion. It is the mechanism by which this processing occurs, not the decisions made, that is the subject of this study. This report may appear critical at times. It is a study to identify problems and its emphasis is in that direction. Positive elements of the regulatory mechanism are indicated principally where they serve as an example of a well structured procedure. A desire to both maintain a concise focus in the study and to avoid self-laudatory comments have not allowed a full description of those procedures that are operating most effectively.

We have divided the problems of the regulatory process into three groups: (1) duplicated activities; (2) ambiguous requirements; and (3) what appears to be unnecessarily repetitive or detailed regulation. Each of these categories has been broken down so that specific problems emerge. In this chapter the recommendations for solving or alleviating the problems are stated in a general way. In Chapter IV they are set out in detail, along with specific suggestions for carrying them out.

Duplicated Activities

The first group of problems falls under the heading of "duplicated activities," which encompasses all reviews or procedures that are repeated at

least once during the processing of the same application. Although comparable but independent reviews are often beneficial, it was generally the finding of this report that for many dredging projects repetitive processes occur that may neither add to the understanding of a project nor help protect the environment or preserve resources.

a. Multiplicity of Agencies

Duplication of reviews and procedures is a result of the number of regulatory agencies involved directly or indirectly in either a permitting or commenting capacity. A request to dredge in San Francisco Bay is certain to involve seven agencies and usually involves nine. There are two principal reasons for the profusion of agencies:

1. Federal and State Regulatory Structure

Dredging is regulated by parallel review structures involving State agencies on one level and Federal agencies on another. Any involvement of local agencies, i.e., city or county, adds a third level. Agencies of both the State and Federal Governments will be involved in virtually every dredging project undertaken in California. Among the State agencies will usually be the Regional Water Quality Control Board and State Water Resources Control Board, the Department of Fish and Game, and possibly the State Lands Commission. For Bay Area or Coastal projects, the San Francisco Bay Conservation and Development Commission or the California Coastal Zone Conservation Commission, respectively, will have jurisdiction. In Lake Tahoe, the California Tahoe Regional Planning Agency and the Tahoe Regional Planning Agency will have jurisdiction. Projects in the channels or flood plain of the Sacramento or San Joaquin river systems will involve the State Reclamation Board. Federal agencies generally include the Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency.

2. Legislative Approach--the Concept of Specialization

Both the State and Federal Governments establish regulatory programs to meet specific needs as they arise, and nearly all agencies regulating dredging were created to deal with a fairly limited range of issues. BCDC was created to control the filling of San Francisco Bay; the California Coastal Zone Conservation Commission to protect coastal resources; the U. S. Army Corps of Engineers to regulate use of certain waterways in addition to its construction activities; the United States Fish and Wildlife Service and the Department of Fish and Game to protect and regulate marine and terrestrial life; the National Marine Fisheries Service to protect marine, estuarine and anadromous fish resources; and the Regional Water Quality Control Board and State Water Resources Control Board to regulate State water quality.

Although each agency was created to protect public interests and promote the public welfare, in practice they exercise different responsibilities and their policies and procedures may differ. The State Department of Fish and Game may oppose a project that would interfere with seasonal fish runs, while the State's Regional Water Quality Control Board might find the project acceptable with respect to contamination levels of spoils. The Federal Fish and Wildlife Service may request project mitigation to protect wildlife resources, although the Corps of Engineers might view other considerations as beneficially offsetting. Because of the different statutory interests of the agencies, it is not reasonable to expect them to always reach identical decisions.

3. Recommendations Regarding Multiplicity of Agencies

No recommendation is made to alter the existing number or substantive jurisdiction of any State or Federal regulatory agency. It

is recommended, however, that certain procedural consolidations, discussed below, be undertaken to aid each agency in carrying out its responsibilities and to minimize unnecessary overlap. These changes should not cause any reduction in the effectiveness of existing resource management. Along with the other recommendations of this study, they will probably increase this effectiveness by allowing more productive effort by the limited number of regulatory personnel.

b. Duplication of Reviews

For every review undertaken by a State agency, there will probably be a comparable review of the same subject by a Federal agency, and vice versa. Some duplication of review may exist even within the same governmental level. Duplication occurs principally because of the two-tiered Federal/State regulatory system mentioned earlier.

A number of State agencies derive some of their regulatory authority from Federal law, and thus to some extent comparable State and Federal reviews have been the intentional result of Federal legislation. For example, the State Department of Fish and Game derives extensive commenting authority from the Corps of Engineers and the Federal Fish and Wildlife Coordination Act; the Regional Water Quality Control Boards and the State Water Resources Control Board, as authorized by the State Porter-Cologne Act, exercise some water quality control responsibilities established under the Federal Water Pollution Control Act. Virtually all State and local agencies concerned with resources or land use receive public notices seeking comment on applications for Corps permits which fall within their jurisdiction.

1. Multiple Land Use Reviews

Both BCDC and the Coastal Commission have specific statutory responsibility to regulate the use of land by determining what types of

development or projects are to be allowed within the area of their separate jurisdictions. The State Lands Commission also may be concerned with land use in these areas from two perspectives. It is the agency that supervises lands owned by the State and in that way has the responsibility to control what use is made of those lands--whether it be leases allowing development, or permits allowing the extraction of minerals contained on the land. It is also the State agency charged with protecting the "public trust" which requires the control of land uses which might interfere with those trust requirements. This is principally found in the control of shoreline uses that might restrict access to waters or the placement of obstructions in waters which might interfere with fishing or navigational needs.

The Corps of Engineers also regulates land use by its control over developments in certain specified waters. The Corps' concern is not solely with the propriety of particular developments at particular locations from a land use concern but also from a wide range of navigational, environmental, economic and other concerns which bear on the projects they review. In evaluating the appropriateness of specific uses of land, the Corps refers extensively to local and State land use determinations, the BCDC Bay Plan being a prime example.

2. Multiple Fish and Wildlife Reviews

Three agencies independently review project impacts on fish and wildlife resources: two Federal agencies--the United States Fish and Wildlife Service and the National Marine Fisheries Service--and one State agency--the Department of Fish and Game. The National Marine Fisheries Service reviews the impacts of projects on marine, estuarine, and anadromous fish resources. The scope of review of the other two agencies--the United States Fish and

Wildlife Service and the Department of Fish and Game--is much broader and virtually identical to each other. The United States Fish and Wildlife Service is concerned with the broad range of fish and wildlife, including the enhancement and protection of migratory birds and endangered species. It is charged not only with undertaking programs to directly protect these resources, but also with providing the input to other agencies to assist in the making of decisions which will affect those resources. The Department of Fish and Game is charged with protecting and regulating California's fish and wildlife resources. In areas where the Department of Fish and Game possesses commenting rather than permitting authority, the agency derives some of its authority from the same source as the United States Fish and Wildlife Service--the Federal Fish and Wildlife Coordination Act--for projects undertaken or regulated by the Federal Government. Additional commenting authority is derived from the Porter-Cologne Act, the McAteer-Petris Act, the Fish and Game Code and other State statutes.

3. Water Quality Review

Although four agencies are responsible for reviewing water quality problems in California, there is generally little duplication of review. Because of the way these reviews are carried out, however, it offers an excellent example of a way to handle multiple reviews. The Regional Water Quality Control Board is the basic enforcing agency for the State water quality law, the Porter-Cologne Act, and is also certified by the Environmental Protection Agency to undertake what would otherwise be Federal water quality review responsibilities. The State Water Resources Control Board is the agency making the official certification of acceptability to the Federal agencies, but it usually acts on the recommendation

of the Regional Board. The Environmental Protection Agency can veto the State action but in California it usually does not.

There is one element of water quality legislation that assigns responsibility solely to the Corps. Section 404 of the Federal Water Pollution Control Act gives the Corps permitting authority over the disposal of dredge and fill materials into virtually all waters in the State. The Corps is doing this review parallel with the review of navigational concerns that occurs under Section 10 of the Rivers and Harbors Act and still relies on the State water quality certification for information with respect to the contamination of spoils.

4. Multiple Environmental Document Preparation

The Federal Government and all State and local governments in California are required by law to evaluate the overall potential environmental impacts of projects they either propose to undertake themselves or are asked to regulate. This is in addition to any specific resource protective objectives of the particular agency. For projects with a significant effect on the environment, this offers an important means for any State agency to express their concerns and to aid the lead agency (the agency with broadest authority over the proposed project) in identifying and evaluating both the negative and beneficial impacts. This evaluation takes the form of either an Environmental Impact Statement (Federal) or an Environmental Impact Report or other environmental document (State). The substantive requirements of both documents are nearly identical. Dredging projects rarely require the preparation of a full Environmental Impact Statement or Environmental Impact Report, but it is possible that one or both could be mandated for a particular project and hence a slight potential for duplication exists. Of twenty applications

for dredging considered under the coordination study, none have required an Environmental Impact Statement or Environmental Impact Report.

5. Recommendations Regarding Duplication of Reviews

Overall duplication of review could be reduced if Federal agencies were to cooperate with State agencies in developing mutually acceptable regulatory policies, such as is done in water quality review. Federal agencies could also use either existing legislative authorizations or memoranda of understanding, where permissible, to allow State agencies to carry out Federal review functions when State policies are at least as stringent as the Federal policies. Existing authorizations contained in regulations promulgated to carry out Section 404 of the Federal Water Pollution Control Act include the potential for Corps "rubber stamping" State decisions where the State's decision-making process is substantially the same as the Corps. As is demonstrated in this section, in California the State decision-making is nearly identical to the Corps.

Memoranda of understanding could include agreements between the Department of Fish and Game, the United States Fish and Wildlife Service and the National Marine Fisheries Service to consolidate or coordinate their commenting and review functions.

If a project requires preparation of both an Environmental Impact Statement and an Environmental Impact Report, they could be jointly prepared, thereby allowing independent review without duplication of paperwork. Joint preparation of these documents is allowed to some extent under existing Federal and State law. Amendments to the California Environmental Quality Act Guidelines proposed by the Resources Agency would encourage joint preparation.

c. Duplication of Procedural Steps

The third and final category of duplicated activities encompasses the procedural steps in the permitting process itself. The problem is that more than one agency will often undertake the same procedural step, resulting in unnecessary and prolonged work for both agencies and applicants.

1. Multiple Comment Solicitation

While a dredging application is being processed there may be as many as four independent solicitations for comments on it, coming from the Corps via their Public Notice, from the BCDC or Coastal Commission, the State Lands Commission, and the Regional Water Quality Control Boards. If environmental documents are required, even more comments will be solicited. By virtue of the size of its distribution, the Corps Public Notice is the most comprehensive of the solicitations, going out to all Federal, State, and local agencies that might be concerned with a project as well as to a wide range of individuals and organizations. Agency solicitations also take other forms. In a manner similar to the Regional Boards and the State Lands Commission, BCDC solicits the comments of other regulatory agencies directly concerned--the State Lands Commission, the Department of Fish and Game, and the Regional Board--on each application submitted to it. BCDC meeting agendas are widely advertised through direct mailing and press releases. The Regional Board has the applicant publish a legal notice in newspapers seeking comments on pending actions.

The proliferation of requests for comments, plus the realization that the issuance of a Corps permit will still be necessary even after all State regulatory agencies have approved a project, understandably reduces an agency's incentive to respond to the earlier State solicitations. Thus, State agency input into the State regulatory process is somewhat less than guaranteed. It is often completely absent or too late for use. In other cases, some State

agencies are not contacted for comments except by the Corps. Without a consistent and comprehensive exchange of comments at the State level, some agencies must rely on the Corps rather than the State to protect their interests.

A related problem of application changes causing reconsideration of virtually the same project, results from agencies receiving and acting on applications at widely spaced intervals. This problem has been alleviated in the Bay Area by the coordination effort, which has indicated that when the agencies all consider an application concurrently, interagency discussions are helped by the details being fresh and by allowing changes in the project without forcing an agency to amend its action.

These problems could be solved if one joint notice for the solicitation of comments were circulated for each project on behalf of all permit granting agencies.

2. Independent Processing of Applications

Each of the agencies involved in the processing of dredging applications has its own procedures, which are unrelated to those of the other involved agencies except for comment solicitation and the use of conditional permits. The experiment in permit coordination, discussed in Chapter III, was an attempt to simplify the processing. It was found that this experiment was helpful to most agencies but may have caused further delay for some of the applicants because the various stages of review proceeded at the same pace. Applicants felt that holding up the agencies that were ready to proceed while awaiting other agencies' actions delayed the application processing. The coordination effort demonstrated the value of involving each agency in the "pre-application period." Early consultation allows applicants to provide necessary data in the proper format and avoid delays caused by insufficient information.

3. Application Forms Unique to Each Agency

A standard application form meeting the needs of all the permit and commenting agencies involved in regulating dredging in San Francisco Bay was developed. It demonstrated that most of the informational requirements agencies have with respect to dredging are very similar and easily combined into a single application packet. All agencies indicated that they needed a descriptive narrative of the project, acceptable reproducible scale drawings of the project site, a certified environmental document or statement of categorical exemption, and a sediment analysis. All the permitting agencies indicated that they needed evidence of ownership, evidence of the legal relationship of the applicant to the owner, and evidence that the representative of either party may bind them. There were some items relating to birth, citizenship, and corporate records that only the State Lands Commission needs. Thus, it was demonstrated that the application information requirements of the agencies were sufficiently similar to allow one application form to satisfy all the agencies.

4. Duplication of Public Hearings

Although most actions on dredging applications do not require a public hearing, the BCDC, the Coastal Commission, the Corps of Engineers, the Regional Water Quality Control Boards, the State Lands Commission, and the Reclamation Board will occasionally hold a public hearing on dredging applications within their jurisdiction. Each agency requires its own notice, and the preparation of staff reports to present substantially the same information. In particular, hearings on Bay Area dredging projects may occur in close proximity, with some of the same people sitting on more than one panel, e.g., the Corps District Engineer and a Regional Water Quality Control Board

member sit on BCDC. This duplicated effort could be alleviated, in part, if Federal and State agencies issued joint meeting notices and held joint hearings. The Corps' interim final regulations for Section 404 of the Federal Water Pollution Control Act encourage joint hearings on appropriate projects.

Ambiguous Requirements

In many situations applicants have difficulty in anticipating the requirements that will be imposed on their dredging projects. Although each agency's general concerns and requirements are clear, applicants may not be able to immediately ascertain whether or not sediment samples will be required or whether a State Lands permit, which might take a considerable amount of time to obtain, will be necessary. There might be a question as to whether an application involving a significant activity can be processed administratively. Administrative processing can reduce time requirements of notices and hearings. For example, an application may qualify for a Corps letter of permission, eliminating the need for water quality certification, and for the preparation of a Federal environmental document.

Ambiguous requirements obscure the ultimate action on an application. Even though a final decision often cannot be made until all aspects of an application are considered, the regulatory system is slowed down by applications for which approval is unlikely. This detracts from applications necessitating greater investment of agency review resources.

a. Length of Time to Process Applications

The principal complaint of dredging applicants is the length of time it takes to obtain the necessary approvals. This was the major reason for the legislation that established this study. As the regulatory process now stands,

an applicant cannot estimate how long the processing of an application will take within an accuracy of two to three months. In some cases, all permits can be secured within six weeks, while in other cases it may take more than six months. Not knowing the length of time in advance hinders applicants from soliciting contract bids or scheduling construction.

Applications processed under the coordination experiment have usually required three and one-half months for complete processing by State agencies and an additional one and one-half months for action by the Corps. (The total Corps processing time is approximately five or six months but it usually runs concurrently with the State processing.) All these figures, derived from the coordination experiment, are for Bay Area projects, but a survey conducted by BCDC of port, marina, and private terminal facilities throughout California indicates that comparable times exist elsewhere.

Dredging projects which raise sufficient environmental, economic, or social issues so as to require a more extensive analysis may take as long as one year to complete. This is often caused by the corresponding necessity to prepare an environmental document. One example might be a proposal to deepen existing depths at a port so as to allow the berthing of a larger class of ship than was previously capable of docking. The Port of Los Angeles is currently considering requesting approval for 30,000,000 to 50,000,000 cubic yards of new dredging in the next few years. This would be to cut a channel for the passage of ships containing liquid natural gas. Surely this type of project would raise public policy, environmental, legal, and economic questions involving lengthy reviews.

The time involved on projects of less significance might suggest that extensive, time-consuming reviews of applications are taking place. In fact,

the actual time spent in reviewing an application for completeness, processing or commenting on the project, and preparing a permit document if one is to be granted, is very brief. For example, during the period the coordination experiment has been in operation, the BCDC staff has spent an average of seven hours in review of each dredging application, the Regional Water Quality Control Board an average of twelve hours, and the Department of Fish and Game five hours. Of the Federal agencies, the Environmental Protection Agency spends eight hours, the United States Fish and Wildlife Service and the National Marine Fisheries Service about one hour, and the Corps of Engineers approximately ten hours. The total hours in this sample is forty-four. In only one case was an application identified by an agency as either complex or controversial. Most were for routine maintenance dredging. The study has identified two principal reasons for the time-related problems. Subdivision "b" (page 27) discusses a number of other matters that indirectly affect processing.

1. No Sanctions for Delays

Although most of the permit granting agencies involved in the regulation of dredging have time limits on their consideration of applications, most of the time limits are illusory because there are no sanctions imposed to compel agency performance. Table I summarizes existing time limits and sanctions affecting agencies that regulate dredging. The State Lands Commission and the Regional Water Quality Control Boards have limits of one hundred and eighty days and one hundred and twenty days, respectively. If these are exceeded, however, an applicant has no recourse because use of State lands without approval would constitute a trespass; and disposal of pollutants into the water is deemed a privilege and not a right, therefore allowing waste discharge requirements to be imposed at any time, even after the one hundred

TABLE I
AGENCY TIME LIMITS

	Time Limits on Action (days)	Sanctions for Delay
Permit Granting Agencies		
San Francisco Bay Conservation and Development Commission	90	Permit issued by Law
California Coastal Zone Conservation Commission	150 ^{1/}	None
Corps of Engineers	None	None
California Tahoe Regional Planning Agency	None	None
Department of Fish and Game ^{2/}		
Suction Dredging Permits	None	None
Streambed Alteration Permits	65 ^{3/}	None
Reclamation Board	None	None
Regional Water Quality Control Board	120	Can begin discharge subject to risk of subsequent disapproval
State Water Resources Control Board	1 year ^{4/}	Loss of Certification Authority
State Lands Commission	180	None
Tahoe Regional Planning Agency	60	Approval issued by Law
Commenting Agencies		
Environmental Protection Agency	Set by Corps Public Notice	Comments too late for use
Department of Fish and Game ^{2/}	Set by Agency requesting comments	Comments too late for use
National Marine Fisheries Service	Set by Corps Public Notice	Comments too late for use
Resources Agency	Set by Agency requesting comments	Comments too late for use
United States Fish and Wildlife Service	None	None

^{1/} The California Coastal Zone Conservation Commission has a time limit consisting of a maximum 90 days within which a hearing must be held and a subsequent maximum of 60 days within which a permit decision must be made.

^{2/} The Department of Fish and Game has permitting authority under the Streambed Alteration provisions of Sections 1601-1602 of the Fish and Game Code and under the Suction Dredging provisions of Section 5653 of the Code. In all other cases, the department has only commenting authority.

^{3/} Fish and Game Code Sections 1601 and 1602 have a series of time limits for each step in the negotiation procedures to an aggregate maximum of 65 days.

^{4/} Section 401 of the Federal Water Pollution Control Act provides a waiver of the need for certification by the State Water Resources Control Board if it has failed to act within one year.

and twenty day time period has elapsed. Applicants who see the time limit pass can undertake the activity without a permit at their own peril. BCDC, however, has a time limit of ninety days and if the Commission fails to meet it, the permit is automatically issued by law. Extensions of this time constraint can be made only with the applicant's agreement.

Commenting agencies have virtually no time limits. For example, State agencies that wish to comment on dredging projects may delay their comment submission until the close of the Corps' Public Notice period. Comment requests by BCDC, the State Lands Commission, or other State decision-making bodies need not be answered to protect the commenting agency's interests. During the coordination effort written comments by the Department of Fish and Game were generally submitted after BCDC action.

Thus, State agencies can introduce objections late in the processing stage that they have not made available to the State permitting agencies earlier. The San Francisco District staff of the Corps of Engineers has stated that waiting for comments from State agencies in response to Public Notices takes considerable time, and causes substantial delays. They have stated that the Corps must wait an average of fifty-seven days for State comments, about twenty-seven days beyond the Public Notice date. In the last few months the Resources Agency, the agency responsible for coordinating State agency comments on Federal public notices, has adopted strong measures to assure notice deadlines are met. In fact, the Resources Agency staff reports that during October every deadline was met. A joint notice, as recommended in this report, would allow the collecting of comments while the State agencies are considering an application rather than after, as is usually the case without formal State-Federal coordination.

As is discussed elsewhere in this report, the Department of Fish and Game's comments enjoy special status since the Fish and Wildlife Coordination Act requires the Corps to seek comments from the "head of the agency exercising administration over the wildlife resources of the particular State...where the project is located." As a general rule, the Corps will wait well beyond the close of the Public Notice period for comments by important State agencies such as the Department of Fish and Game.

Under the Federal Fish and Wildlife Coordination Act, and the corresponding memorandum of understanding entered into between the Secretary of the Army and the Secretary of the Interior, the District Engineer cannot finally process an application until comments from the appropriate United States Fish and Wildlife Service officials are received. Under the coordination experiment, the response time for comments by the United States Fish and Wildlife Service, however, have generally been well within the sixty day time period allowed for comments.

A number of steps should be taken to alleviate these time-related problems. It should be State policy that all State permitting or commenting agencies are to act as quickly as possible on dredging applications without jeopardizing natural resources or environmental controls, and that all State agencies are to abide by established time limits. The time limits should be similar for all permitting agencies and should include the following features:

- (a) if the deadline isn't met, the permit to dredge is automatically granted;
- (b) extensions will be available only with the applicant's agreement; and (c)

shorter time limits will be provided for simpler dredging projects than for more complex and controversial ones. Comments that do not meet the time limits should be barred.

Unless permit processing at the Federal level is modified in a similar manner, any time savings at the State level will be of little value to applicants. It is, therefore, recommended that time constraints and sanctions be adopted by Federal agencies with respect to issuing permits or comments on dredging applications.

It is recommended that the time limit for permit granting agencies be ninety days from the date the application is found to contain sufficient information (including certified environmental documents) for the agency to make its decision. Ninety days was selected for various reasons. As the existing time limit affecting BCDC, it has proven to provide enough time for projects which raise time consuming issues or require more than one hearing, and for administering variations in the workload, vacation schedules, and so forth. Over eighty percent of those responding to the questionnaire, discussed in Appendix J, indicated that applications for routine dredging should be acted on in less than sixty days. Review of BCDC records for administrative permits issued during 1975, indicates that ninety percent were issued in sixty days or less. Fifty-six percent of the permits requiring public hearings were issued in sixty days or less. Experience from the coordination experiment also indicates that this time limit can be met by all agencies although it will still require close attention and some administrative improvements. A time limit of ninety days will also provide applicants with a reasonable prediction of when agency action will be taken. It is recommended that the State Lands Commission should abide by the same time constraints, but it is recognized that its role, as a property owner, makes the sanction of automatic approval inappropriate.

It is recommended that the deadline for comments should be thirty days from the date the request for comments is issued. It is considered a reasonable length of time even for complex projects, and is already in use. Thirty days is the usual Corps Public Notice period. The Regional Water Quality Control Boards and the State Water Resources Control Board advertise notices of proposed waste discharge requirements and certification for thirty day periods. BCDC has a twenty-eight day mandatory period to allow for comments between filing of an application and holding the public hearing. Comments on most applications should be submitted well before the thirty day deadline. Occasionally an agency will need more than thirty days to prepare comments. In these cases, time extensions should be available if requested before expiration of the original deadline by the director of the agency staff. If the proposed project is not of enough significance to warrant an extension request by the director, then the agency should be prevented from acting subsequently and the application should be processed to completion.

2. Workload and Backlogs

Some of the agencies have indicated that substantial workloads coupled with understaffing have not allowed them to comply within established time limits. The Department of Fish and Game has been particularly concerned about insufficient personnel and budget. The need for more funding may be a major cause of the personnel shortage that makes it difficult for the agency to meet its responsibilities within reasonable time limits.

The recommendations in this report should reduce agency workloads, especially once regulations and policy statements are adopted. However, none of these recommendations can be carried out unless there are an adequate number

of personnel and reasonable workloads. It is recommended that each agency should reassess its allocation of existing staff to assure that the recommended time limits will be met.

b. Guidance and Consistency of Agency Evaluations

Another central difficulty identified in the course of this study is that agencies need policies, standards, guidelines and procedures with which to guide their decisions.

A meeting between BCDC staff members and the permit staff of one regulatory agency exhibited the consequences of this problem. An effort to develop a "flow chart" for that agency's procedural system resulted in each of the permit staff members present having a different idea as to what was to be done with the application at each step. They must make decisions on a case-by-case basis having to justify their actions only within general policies or specify the criteria for their decisions. Applicants complain that agencies are "unaccountable" for their actions unless there are specific policy and procedural guidelines.

The problems discussed in this section are among the most crucial in the report. Their elimination will prevent a number of unapprovable projects from even entering the regulatory system and consuming review time and effort, and they will make decision-making easier and quicker.

1. Formal Policies, Plans, and Decision-Making Criteria

Both the State and Federal agencies need up-to-date guidelines for the substantive reviews they are obligated by law to undertake. In many cases, the sole agency guidance is found in the organic law that established the agency and describes legislative intent. Table II summarizes the existence of formal policies.

TABLE II
EXISTENCE OF FORMAL POLICIES
TO GUIDE DECISIONS ON PERMIT APPLICATIONS

	Policies on Dredging	Document
Permit Granting Agencies		
San Francisco Bay Conservation and Development Commission	Yes	San Francisco Bay Plan and Administrative Regulations
California Coastal Zone Conservation Commission	Yes	Coastal Plan and Administrative Regulations
Corps of Engineers	No ^{1/}	None
California Tahoe Regional Planning Agency	Yes	Land Use Ordinance and California Tahoe Regional Planning Agency Regional Plan
Department of Fish and Game ^{2/}	Yes/No ^{3/}	
Suction Dredging Permits	Yes	Administrative Regulations
Streambed Alteration	No	None
Reclamation Board	Yes	Standards for Encroachment
Regional Water Quality Control Board (San Francisco Region)	Yes	Basin Plan and Dredging Policy ^{4/}
State Water Resources Control Board	No ^{5/}	None
State Lands Commission	No ^{6/}	None
Tahoe Regional Planning Agency	Yes	Tahoe Regional Plan and Land Use Ordinance
Commenting Agencies		
Environmental Protection Agency	Yes	Administrative Regulations and Regional Criteria
National Marine Fisheries Service	No	None
Resources Agency	No	None
United States Fish and Wildlife Service	Yes ^{7/}	Administrative Regulations
Department of Fish and Game ^{2/}	No ^{3/}	None

- ^{1/} Although administrative regulations establish a broad range of factors to be considered in evaluating a dredging project, there is no specification as to how these factors are to be weighed or considered, other than to require a finding that the application is in the public interest.
- ^{2/} The Department of Fish and Game has permitting authority under the Streambed Alteration provisions of Sections 1601-1602 of the Fish and Game Code and under the Suction Dredging provisions of Section 5653 of the Code. In all other cases, the department has only commenting authority.
- ^{3/} Suction dredging permits under Section 5653 of the Fish and Game Code are given on the basis of a pre-determined acceptability of such activities in various waters of the State. The department's Fish and Wildlife Plan, written in 1966 has not been subsequently amended and sets no particular dredging policies to guide department comments or actions on permits.
- ^{4/} The Regional Water Quality Control Board, San Francisco Region, has a policy resolution on dredging which is to be revised. It follows the Environmental Protection Agency in-house guidelines which also are to be revised. None of the other Regional Boards have specific dredging policies.
- ^{5/} No specific dredging policies. Generally follow the Regional Water Quality Control Board's recommendation on whether to issue a certificate of conformance.
- ^{6/} Only policy guidance is through public trust considerations and mineral survey.
- ^{7/} This agency has broad statutory objectives relating to the protection of fish and wildlife resources and generally follows in-house Environmental Protection Agency, Region IX, guidelines in evaluating specific projects. Policy criteria were formalized on December 1, 1975, 40 Federal Register, 55810 et seq.

Because of their mandates, some agencies, such as the BCDC and the Coastal Commission, do have comprehensive planning documents combined with an on-going review process that helps guide the regulatory procedures, including specific guidance on dredging.

Guidance is less complete in other agencies. The State Lands Commission maintains no planning guidance other than a survey of mineral deposits and a mandate to protect the public trust and interests in the land and water resources under its jurisdiction. All the Regional Water Quality Control Boards have submitted basin plans for their regions, but only the San Francisco Board has a specific policy on dredging. The basin plans are still going through the procedures necessary to obtain final approval. The State Department of Fish and Game has a fish and wildlife plan that was adopted in 1966, and has not been updated since. This plan, therefore, pre-dates much of the environmental legislation that now controls the policies of the Department of Fish and Game as well as the other regulatory agencies.

The Corps of Engineers has no plan in the traditional sense, i.e., indicating what particular types of projects are to be permitted in what particular areas or circumstances. They do have regulations that mandate the consideration of a wide range of factors on which their decisions are to be based, and these factors probably establish as broad a scope of project review as undertaken by any agency. The means of interrelating these factors, however, is given little guidance, other than to make an effort to arrive at a decision that will reflect the "public interest."

The United States Fish and Wildlife Service previously had no formal written planning framework other than the limited guidelines

that existed in their own organic legislation, in the Fish and Wildlife Coordination Act, the Navigable Waters Handbook, or other legislative policy expressions. They also used the Environmental Protection Agency disposal criteria as their major guidelines on dredging projects. Recently promulgated guidelines published in the Federal Register on December 1, 1975, appear to now clarify the United States Fish and Wildlife Service policies on all projects in navigable waters. The National Marine Fisheries Service still does not have formal policies.

Adoption of formal regulatory policies, especially regarding the effects of dredging and disposal on water quality and aquatic organisms, has been hindered by a dearth of information regarding these effects. Serious concerns about the effect of heavy metals (mercury, for example), pesticides, or oxygen using compounds associated with spoils has prompted a cautious approach by many agencies. Recognizing the need for more information, the Corps of Engineers is currently conducting research costing more than thirty million dollars to identify and quantify these effects. In the Bay Area alone, the San Francisco District's Dredge Disposal Study will cost about two and one-half million dollars. It is expected that the results of this study, which will be complete in the early part of 1976, will allow agencies to adopt clear decision-making criteria.

The absence of formal policy guidance has two effects. First, applicants have difficulty ascertaining what is expected of them in terms of project requirements. Applicants who have been through the process more than once may have some general notions, based on previous experience, as to what is or is not acceptable. However, particular agencies, such as the Department of Fish and Game, have indicated that a change in personnel may result in a

change in informal policies--often the only policies that the agencies have to go on--so the experienced applicant has no necessary advantage. This void in clear policy guidance creates a situation that is difficult for the applicants and unnecessarily time consuming to agencies.

Applicants who want to undertake a project are required to submit their application, let the agencies undertake their review and make whatever comments they have, redesign their project to conform to any objections that may be raised, and submit it for further review. If the project is such that the objections cannot be satisfied, then the application will be either withdrawn or denied. In either case, a considerable amount of regulatory effort will have been expended that could easily have been avoided. If applicants could know in advance that a certain project design will be unacceptable, non-conforming applications might never be submitted, or at the very least would be identified as unacceptable within a short time after submission.

Second, the lack of such guidance or policies makes agency review and decision-making difficult. Decisions are based on a case-by-case review, without any direction that ensures a consistent approach. Considerable effort is expended making many decisions that could be considered routine.

Government should attempt to base its decision on clear policies which specify its objectives in carrying out a mandate to protect the public interest. Without such policies, action on an application can become uncertain or inconsistent. Formal policies, therefore, allow applicants to anticipate requirements, as well as lend support to the agency's action.

Much could be done to alleviate these conditions if all agencies would formally adopt plans, policies, and guidelines on dredging that would describe each agency's concerns, specify the factors to be considered, and tell how decisions are to be made. These guidelines would be periodically updated. In addition, all agency actions with respect to permit approvals or denial, comment preparation, or other actions, should be explained and referenced to the agency's official policies.

2. Administrative Regulations

Several State regulatory agencies do not have fully defined administrative regulations to direct the procedural operations of the agency in a logical, expeditious, and legally adequate manner. This problem seems to be most crucial with respect to the Regional Water Quality Control Boards which rely on regulations promulgated by the State Water Resources Control Board. Table III summarizes the existence of regulations.

The same requirement of fairness that obligates agencies to have formal regulatory policies applies to administrative regulations. Policies and administrative regulations for some agencies may be formally implemented in the same way, i.e., by publication in the California Administrative Code for State agencies or in the Code of Federal Regulations and Federal Register for Federal agencies. BCDC, for example, utilizes its administrative regulations to both establish procedural formalities and to give some specific criteria to procedural policies not specified in the Bay Plan.

The rules by which the agencies process applications and reach decisions should be express and consistent so that applicants understand what is to be expected of them as well as what they are to expect of agencies.

TABLE III

EXISTENCE OF ADMINISTRATIVE REGULATIONS FOR DREDGING

Permit Granting Agencies	Authority to Promulgate	Regulations Promulgated
San Francisco Bay Conservation and Development Commission	Yes	Yes
Reclamation Board	Yes	Yes
California Coastal Zone Conservation Commission	Yes	Yes
Corps of Engineers	Yes	Yes
California Tahoe Regional Planning Agency	Yes	No ^{1/}
Department of Fish and Game ^{2/}		
Suction Dredging Permits	Yes	Yes
Streambed Alteration Permits	Yes	No ^{3/}
Regional Water Quality Control Board	Yes	No ^{3/}
State Water Resources Control Board	Yes	Yes
State Lands Commission	Yes	Yes
Tahoe Regional Planning Agency	Yes	No ^{1/}
Commenting Agencies		
Environmental Protection Agency	Yes	Yes
Department of Fish and Game ^{2/}	Yes	No
National Marine Fisheries Service	No	No ^{4/}
Resources Agency	Yes	No ^{4/}
United States Fish and Wildlife Service	Yes	Yes

^{1/} The California Tahoe Regional Planning Agency and Tahoe Regional Planning Agency regulations to guide processing are contained in these agencies ordinances rather than the Administrative Code.

^{2/} The Department of Fish and Game has permitting authority under the Streambed Alteration provisions of Sections 1601-1602 of the Fish and Game Code and under the Suction Dredging provisions of Section 5653 of the Code. In all other cases, the department has only commenting authority.

^{3/} General procedures for the Regional Water Quality Control Board handling Waste Discharge Requirements are contained in the State Water Resources Control Board Regulations, 23 Cal. Ad. C. Section 2340, et seq.

^{4/} Regulations exist for implementing the California Environmental Quality Act but not for processing State agency comments.

Such rules will enable an agency to process applications without spending significant effort deciding the most basic procedural questions each time. Regulations must be comprehensive, explaining and incorporating both formal and informal agency procedures and setting forth standards of review and guidelines used in the evaluation of a project, and describing where the agency's formal policies can be found. Such regulations will provide indispensable guidance for the applicants and also a standard to which an agency can be held if it improperly processes an application.

3. California Environmental Quality Act (CEQA) Guidelines

Observations made during this study, and the review of previous application files, indicate that CEQA has not caused problems for dredging applications. Environmental impact reports are not even required for most dredging projects since these are either considered categorically exempt or amenable to a negative declaration. In other cases, in particular large, new dredging projects, environmental impact reports are required. There have been no environmental impact reports prepared for projects coordinated under Senate Bill 2418.

The problem that arises is one of applicant or agency apprehension caused by the uncertainty as to whether or not an environmental impact report or negative declaration is required, or if the project is categorically exempt. The apprehension and uncertainty leads to delays. The current CEQA Guidelines, not specifying how dredging is to be considered, leaves the decision to the lead agency. Some regulatory agencies, such as BCDC, have determined that categorical exemptions are appropriate for certain dredging projects in the promulgation of their own regulations for carrying out CEQA.

The CEQA Guidelines should be amended to clarify how dredging is to be handled. The Resources Agency has proposed a categorical exemption which

would exempt maintenance dredging of 10,000 cubic yards or less if not polluted. In order to establish a categorical exemption for a class of activities, CEQA requires the Secretary for Resources to find that the exempted activities will not cause a significant impact on the environment. Testimony on this proposed categorical exemption and other proposed amendments to the State Environmental Impact Report Guidelines will be taken at a public hearing to be held in the early spring. Many projects which do not come under this exemption may nonetheless be found, on a case-by-case basis, to have no significant effect on the environment. Such projects would receive a negative declaration.

Unnecessarily Repetitive or Detailed Regulation

Dredging differs from many other regulated activities in that most projects require periodic maintenance. Since 1970, about sixty percent of all dredging applications considered by BCDC were for recurring maintenance activities. About half of the applications for both new and maintenance dredging were for projects of less than 10,000 cubic yards. In the Bay Area, a project of that size or smaller is usually considered small. The extent to which projects of this nature warrant detailed, case-by-case review by each of the involved agencies is worth considering. Appendix B contains additional information on the nature and size of Bay Area dredging projects. Table IV summarizes the existence of simplified procedures for each agency.

a. Minor Projects

A large number of dredging projects are relatively insignificant in an environmental and even in a land use sense. For example, one application

TABLE IV
EXISTENCE OF SIMPLIFIED PROCEDURES FOR PROCESSING

	Simplified Procedures	Dredging Projects Covered
Permit Granting Agencies		
San Francisco Bay Conservation and Development Commission	Yes	Less than 100,000 cubic yards new and all maintenance
Reclamation Board	No ^{1/}	None
California Coastal Zone Conservation Commission	Yes	All maintenance
Corps of Engineers	Yes	Less than 10,000 cubic yards with land disposal & all maintenance
California Tahoe Regional Planning Agency	No ^{2/}	None
Department of Fish and Game ^{3/}		
Suction Dredging Permits	Yes	Suction Dredge with less than a 12 inch intake pipe
Streambed Alteration Permits	No	None
Regional Water Quality Control Board (San Francisco Region)	Yes ^{4/}	Unpolluted Spoils
State Water Resources Control Board	No ^{1/}	None
State Lands Commission	No	None
Tahoe Regional Planning Agency	No	None
Commenting Agencies^{5/}		
Environmental Protection Agency	No	None
Department of Fish and Game ^{3/}	No	None
National Marine Fisheries Service	No	None
Resources Agency	No	None
United States Fish and Wildlife Service	No	None

- ^{1/} Although all projects are treated the same, very small projects and some maintenance projects may not even be subjected to regulation. Also provision exists for the issuance of emergency permits by the Board General Manager.
- ^{2/} The California Tahoe Regional Planning Agency policy is to administratively approve all projects conforming to their Regional Plan and refer all non-conforming projects to their governing board. Dredging is currently so controversial that all projects are being referred to the board.
- ^{3/} The Department of Fish and Game has permitting authority under the Streambed Alteration provisions of Sections 1601-1602 of the Fish and Game Code and under the Suction Dredging provisions of Section 5653 of the Code. In all other cases, the department has only commenting authority.
- ^{4/} The State Board procedures are the same for all projects submitted to it. The State Board relies on the Regional Boards to hold public hearings and make recommendations for most routine dredging projects. When this procedure is followed the State Board review is quite rapid.
- ^{5/} All commenting agencies treat all projects in the same manner administratively although review efforts may vary considerably.

submitted to BCDC during the dredging coordination experiment involved the dredging of less than 200 cubic yards of material which would be transported away for dry land disposal. This applicant was informed that even if all agencies used every procedural shortcut and expediting device at their disposal, the regulatory process would still require review by at least nine agencies; take at least one month, and cost at least a few hundred dollars for filing fees.

Conversely some projects, even though they consist of a small quantity of dredging, can significantly affect important resources and therefore deserve close scrutiny. The distinction between significant and insignificant matters may at times be difficult, but some parameters can be described in advance which will make the decision easier.

Most agencies submit every project proposed to exactly the same review. The State Lands Commission has no procedure for processing a simple project without going to the full Commission for review. A form of staff review is currently being considered for such projects. BCDC has an administrative review for certain dredging projects, specified as any maintenance dredging or new dredging of less than 100,000 cubic yards in any twelve month period. Below this figure, however, all minor projects are treated the same.

The San Francisco Regional Water Quality Control Board has an administrative provision for determining which applications need waste discharge requirements. When requirements are necessary, however, the item must be considered by the Board even though it may clearly comply with the Board's policies.

The Corps of Engineers has two procedures available which speed application processing. By issuing a "Letter of Permission," the San

San Francisco District can allow dredging of 10,000 cubic yards or less without the need for public notice or hearing if there is disposal on dry land and no return flow. This particular procedure is used only by the San Francisco District, although all Corps District Engineers are authorized to use it. The regulatory process could be simplified if the "Letter of Permission" were more widely used by the Corps Districts for projects that are either already subject to extensive State regulatory review or have no significant impact. The second procedure was provided for in the interim final regulations published on July 25, 1975, for Section 404 of the Federal Water Pollution Control Act. District Engineers can adopt "general permits" under Section 404. A general permit consists of an authorization for a certain type of activity which is conducted in a specified manner in a given location. In the Bay Area, and other areas where appropriate, the Corps should consider issuing a general permit for maintenance and small new dredging.

It appears, then, applicants face the same steps in each agency regardless of the significance of their project. Insignificant projects are delayed while agencies undertake formal notice procedures, prepare staff reports and recommendations for Board or Commission consideration, and observe various waiting periods, whether their project is very large or small. Considerable time could be saved for applicants if each State agency adopted regulations providing for staff rather than Board or Commission action on insignificant or emergency projects and identified these matters in advance. Similar proposals have been opposed by applicants who fear staff exercising too much power. These concerns could be mitigated by giving staff authority only to approve an application while retaining the authority to deny at Board or Commission level.

b. Maintenance Dredging

Dredging for navigational or berthing purposes is unique among development projects because a need for subsequent, periodic dredging to maintain the previously set channel depths is usually inherent in the original project design. In some cases, channels and harbors can be located in a way to reduce the required volume of dredging.

Since sixty percent of all the projects involving dredging that have been reviewed by BCDC over the past several years were for maintenance activities, the majority of dredging reviews are for projects on which the basic land use, disposal, ownership, navigational, and environmental questions have been addressed. It would seem that the only issues of interest on a recurring basis would be those related to water quality and impacts on marine life. A number of agencies have already made efforts to deal with the problem of the periodic review of maintenance dredging, but difficulties still exist.

Three regulatory agencies--BCDC, State Lands Commission, and the Corps--allow long-term authorization of maintenance activities, generally subject to periodic review. The recently promulgated "interim final" regulations by the Corps under Section 404 of the Federal Water Pollution Control Act (and specified as also applicable to activities under Section 10 of the Rivers and Harbors Act of 1899) indicate that in the future an approval of a new dredging project that will entail subsequent periodic maintenance dredging is to be deemed an approval of the maintenance dredging as well, subject to certain requirements of notification and occasional review. The State Lands Commission often will give a lease of property where maintenance dredging will be required and specify that no independent approvals need be obtained for subsequent maintenance dredging. BCDC is also able to give maintenance permits for a fixed period of

time, usually conditioned on meeting requirements imposed by other regulatory agencies, principally the Regional Board.

It seems inappropriate to review a maintenance project each time it recurs in the same depth as was appropriate when the project was first proposed. Because maintenance activity and its effects can be anticipated, they should be considered when the initial authorization is given. The initial authorization (or the next maintenance authorization for projects already in existence) should restrict the work to a specific area and depth, it should specify the disposal site, and require that the dredging and disposal be carried out in accord with the criteria in effect when the work is done. Addressing maintenance in this way would eventually remove more than half of the dredging applications from the extensive review they now receive.

CHAPTER III. COORDINATION EXPERIMENT EVALUATION

In addition to preparing an investigatory report, Senate Bill 2418 directed the Resources Agency to establish temporary procedures for centralized processing of permit applications for specified dredging projects within the jurisdiction of BCDC. It was believed that this experiment in "one stop shopping" would bring some order to the somewhat complex process in existence and speed it up. The merits of such an approach have been widely discussed, and a number of states, including Washington and Oregon, have a statewide coordination system. This experiment, however, was not an effort to establish a permanent regulatory overhaul, but rather to try out a number of ideas and processes and decide whether permanent reform of some type was in order. The projects to be coordinated were limited exclusively to maintenance dredging or new dredging of 100,000 cubic yards or less within a twelve month period.

Operations of the Coordination Experiment

Because observations made of the various agencies' activities are a major source of information for this report, a description of the experiment should prove helpful. The following key elements were established:

1. A central office through which applicants and agencies could direct their inquiries, documents, and decisions.
2. A simplified application process that required only one standard application form.
3. A staff whose role was limited to providing assistance rather than making substantive decisions.

4. Time limits for agency actions.
5. Screening of applications for completion before transmittal to the agencies.
6. Each agency's internal procedures remained unchanged.
7. A brochure describing how to prepare the standard application and pursue it to completion.
8. Administrative regulations detailing operations adopted into the California Administrative Code to guide the coordination process.

Technical details of the coordination process can best be understood by reading the administrative regulations, information brochure, and application form. These documents are to be found in Appendices E, F, and G. Appendix H contains elapsed time records for the processing of all applications received by the Coordinator.

The "Permit Coordinator," a central receiving and distribution center for application and permit materials, is made up of certain BCDC staff members specifically employed to carry out these functions. The Coordinator's first formal function is to review applications for completeness. Incomplete applications must be returned to the applicant for additions or corrections. Only fifteen per cent of the applications have been complete when initially submitted. It has taken applicants an average of thirty-three days to supply the materials necessary for the Coordinator to deem the application complete and transmit it to the permitting and commenting agencies for further review.

Delays in this screening step, due to minor deficiencies in applications, sometimes occur because the Coordinator has no authority to waive requirements in a given case unless an agency has previously indicated that information

usually required is unnecessary for a particular application. For example, the Coordinator has no way of knowing during the initial screening if an agency already has any applicable information on file. Some agencies and applicants complained that holding applications until they are entirely complete for all agencies delays those agencies for whom adequate information already exists.

Applicants and agencies have had differing opinions as to whether or not the initial screening of applications has speeded up the process. Experienced applicants reacted somewhat negatively because preliminary agency contacts are still required, and all information previously required is still necessary. In effect, a new layer is added to the regulatory system. Even these applicants, however, often submitted incomplete or inadequate applications. Inexperienced applicants found that a great deal of time and effort was saved because it could be determined in advance with which agencies preliminary contact is necessary, what types of information are required, and how applications are to be filled out. Application screening and the transmittal of complete application materials in a standard format to all agencies has reduced the agencies' need to contact applicants and each other for information.

After receiving an application package from the Coordinator, each agency has fourteen days to make an independent determination of completeness of the submitted materials. If the package is complete, the Coordinator is so notified. Incompleteness at this stage is usually the result of a substantive problem with the application materials. Thirty percent of the applications forwarded by the Coordinator were found incomplete by the agencies. Although the coordination staff was familiar with each agency's requirements, it was found that contact between the applicant and the agency was still necessary

to determine specific requirements. It was also found that each agency's substantive review of application materials was not replaced by the Coordinator's review. Applicants who discussed their projects with both permitting and commenting agencies before submitting any materials, generally submitted better applications which moved through the initial review steps more quickly.

Thus far, no agency has consistently notified the Coordinator of its determination of completeness within the fourteen day time limit. The Coordinator has spent a significant amount of time and energy reminding agencies of time limits on specific applications.

When an agency reports that an application is incomplete, the Coordinator, not the agency, requests the additional information. This procedure ensures that all agencies have identical information, but it can sometimes be an impediment because a direct request from the agency to the applicant might be quicker (Table V provides a summary of response time).

When--and if--an application is determined to be complete by the agencies or after fourteen days, whichever happens first, the application is deemed filed and all permitting and commenting agencies begin processing. Under Senate Bill 2418, commenting agencies are given sixty days from the date of filing to submit comments for consideration by the permit granting agencies. Permit granting agencies retain their previous time limits but must report on an application's status within the same sixty days. Notice of all decisions, status reports, or comments are given to the Coordinator. Agencies' adherence to specified time limits has been erratic. In addition, difficulties, principally due to staff inexperience with the procedures or confusion over which projects are coordinated, have sometimes short-circuited well intended efforts.

TABLE V

AVERAGE PROCESSING TIMES

(Figures are the average number of days for all applications completing each step to date. Figures in parenthesis indicate the number of applications on which the data is based.)

Agency	Determination of		Application		Comment		Authorization		Total Time
	Completeness		Preparation		or Denial		Days		
	(14 days allowed)		(60 days allowed)		(60 days allowed)				
	Days	Time	Days	Time	Days	Time			
Hours ^{1/}	Elapsed ^{2/}	Hours ^{1/}	Elapsed ^{2/}	Hours ^{1/}	Elapsed ^{2/}	Hours ^{1/}	Elapsed ^{2/}	Hours	Elapsed
STATE									
San Francisco Bay Conservation and Development Commission	1(10)	7(21)	---	---	6(10)	30(15)	7	37	
Regional Water Quality Control Board	3(9)	15(19)	---	---	9(9)	50(11)	12	65	
State Lands Commission	2(10)	13(20)	---	---	---	---	---	---	
Commenting roll	---	---	3(3)	23(10)	---	---	4	36	
Permitting roll	---	---	---	---	44(1)	163(1)	49	176	
Department of Fish and Game	2(10)	17(18)	3(9)	49(15)	---	---	5	66	
Resources Agency	---	---	---	43(13)	---	---	---	43	
FEDERAL									
United States Fish and Wildlife Service	1(10)	10(19)	1(10)	17(16)	---	---	1	27	
National Marine Fisheries Service	1(10)	7(21)	1(10)	25(15)	---	---	1	32	
Environmental Protection Agency	2(10)	12(17)	6(10)	46(12)	---	---	8	58	
Corps of Engineers	2(8)3/	14(20)	---	---	8(8)	94(11)3/	10	108	

- 1/ Hours--figure calculated as average of hourly time specified for each project by the agency at the conclusion of processing the application. This data is only available for applications on which all processing is completed and for which agency questionnaires have been returned.
- 2/ Days Elapsed--average of calendar days elapsed as recorded by the Permit Coordinator. This data is available for every application that has the various steps completed.
- 3/ Corps of Engineers data has been calculated in a different manner since this processing occurs partly outside the coordination system. It represents the average of elapsed days between the Coordinator notifying all agencies of an application being deemed filed and the issuance of the Corps' permit.

The existence of special procedures for a limited number of applications creates some confusion among the agencies. They have difficulty keeping track of which applications are being coordinated and which are not.

Agency personnel have said that certain aspects of the coordination effort have been especially valuable, even though calendar days for processing have not been reduced. In addition to the application screening, agencies indicated the monthly status sheet prepared by the Coordinator and phone calls from the Coordinator to remind them of impending deadlines were helpful in scheduling their regulation activities.

Evaluation of the Coordination Experiment

To date, twenty-two applications have used the coordination procedures, and eleven have been completed. This small number of applications, occurring in the early stages of an experiment, may not allow the collected data to fully reflect the capabilities of this type of system.

Any analysis of centralized processing must be tempered by the limited nature of the projects coordinated during this experiment. It is limited to small new dredging and all maintenance dredging, and excluded all projects that were not exclusively dredging. The coordinated projects are basically those undertaken by large operators seeking periodic maintenance permits. Most one-time, smaller projects, such as a person who wishes to put in a small boat dock or dredge at a small marina while replacing some pilings, or dredging which is part of a larger project, are not coming to the Coordinator.

A definitive evaluation of the benefits of the permit coordination experiment is difficult. It is not possible to estimate whether total processing times are significantly reduced, nor is it possible to estimate

if some applications would have taken longer without coordination, particularly because pre-coordination data is not comparable. There was also an initial period of confusion and uncertainty while procedures were being formalized and while all the participants were attempting to understand and adjust to the new system. Finally, since this was above all an experiment, the Coordinator strictly followed all processing requirements in order to establish some "control" basis. During the period of coordination activity many agency improvements were made, some probably as a result of the spotlight that the study put on the agencies. Personnel became more adept at their own procedures as well as those of other agencies.

Table V shows the average number of calendar days it has taken for all applications to date to go through various stages of the permit process. The data is taken from the Coordinator's records of transmittal and receipt dates for the documents circulated. (Appendix H breaks down this data for each application filed.) It also shows the number of person hours expended in actual review. This data is taken from questionnaires returned by each agency's staff at the conclusion of the processing of each application.

Relatively few hours of working time were required to process these applications, but several days were expended in moving applications from one step to another. Some of this time was clerical time, transmittal time, either internally or through the mails, notice periods, or other unavoidable delays. It appears that in many cases decisions could be made quicker and delays reduced if there were clear agency policy statements and administrative regulations. We recommend that this guidance should be provided by all agencies.

A problem that occurs during the final review stage of the coordination process is the timing of agencies with respect to each other's processing. Ideally, commenting agencies should submit their comments early enough to be helpful to the permitting agencies in reaching their decisions--this has not always been done. Fish and Game, the only State commenting agency involved in this experiment, has generally submitted its written comments after BCDC and the Regional Water Quality Control Board have completed their permit reviews. Other State agencies that respond to the Corps' Public Notices are also too late. The Corps Notice usually has a comment period of thirty days. Notices are published only after an application has been submitted to the Corps and certain preliminary reviews completed. Because applications are not always submitted simultaneously to the Corps and State permitting agencies, and because of the length of the Corps preliminary reviews, Public Notices are generally issued after State permit agencies have completed their review. At this stage, the comments are useful only to the sole Federal permitter, the Corps. Improved timing, which would allow State permit agencies time to consider other State and Federal agencies' comments, could be accomplished by a joint (Corps-State) Public Notice issued as soon as applications are received.

Late comments are also a source of delay. According to the Corps staff, the composite State comments submitted through the Resources Agency averaged four weeks late during the first six months of 1975. State comments on dredging applications coordinated in this experiment averaged forty-three days, thirteen days longer than the Public Notice comment period. Agency comments during the coordination experiment were to be submitted to the Coordinator within sixty days. Review of the records in Appendix H reveals that in spite of the special efforts of this experiment there were ten late comments affecting

seven of fifteen applications. Because of this experience, it is recommended that not only should there be clear time limits, but that there should also be sanctions that will assure compliance.

The nature of the applicant affects an evaluation of benefits of the experiment. Of the twenty-two applications submitted to the Coordinator, all but four were for what might be termed "experienced" applicants. These include the government (City of Richmond and the State of California), major ports (Oakland and San Francisco), major corporations (Standard Oil, Construction Aggregates Corporation, Levin Metals, Smith-Rice, Basalt Rock, Shellmaker, Pacific Gas and Electric Company, Benicia Port Terminal Company, and Moe Sand Company), or parties represented by knowledgeable consultants (Merritt Ship Repair and Marina Vista). For these applicants, few significant benefits resulted from the coordination effort other than perhaps the imposition of time limits on the agencies. These applicants are all capable of dealing with the various agencies and understanding the requirements for obtaining permits.

Some evaluation of the coordination system can be made on the basis of cost-benefit considerations. The cost of maintaining a Coordinator (including clerical support and operating expenses) for all dredging applications is about \$20,000.00 per year. For those few applicants (perhaps four so far) who seem to benefit greatly, this expense may be unwarranted. Agencies, however, also benefit; the staffs of some agencies have indicated that dealing with coordinated applications saved a great deal of effort for them. Presumably, then, the Coordinator is increasing the work capacities of those agencies.

Applicants generally felt that the Coordinator should have greater authority to be effective. Such authority might include the actual power to issue permits on behalf of State agencies and to enforce time limits, perhaps by barring subsequent agency actions.

A Coordinator might prove more useful and beneficial if the range of projects coordinated and the Coordinator's authority were substantially increased. These powers are not recommended in this report. Such authority would require major restructuring of enabling legislation and it would require a new agency--or at least a much greater staff of specialists at an existing agency. Making these changes for the limited number of dredging applications is not wise.

The belief of many observers and participants in the regulatory system that a rigid, formal coordination system is the answer to time delays is probably a mistaken one. At least the experiment does not bear out this belief. A principal observation made during the coordination experiment is that the major delays in the processing of permits are from the internal operating procedures of the individual agencies and the cluttering of the process with projects that should not be so extensively reviewed. The major delays are not from conflicts or difficulties between agencies and applicants or among agencies which might be solved by better coordination.

Other forms of coordination activity, such as joint public notices, unified hearings, a standard application form and the information service, are beneficial. These features can be retained without the personnel and operations necessary to run the coordination system. Therefore, although the coordination experiment has been beneficial to the study and has encouraged improved application processing, it does not appear to be justified to be continued on a permanent basis. Because some systematic cooperation among agencies would result in a saving of time and effort for agencies and applicants, and in better use of comments, some coordination is warranted. Creation of a new bureaucracy is not the solution. Experience

with the State of Washington's statewide "permit coordination" has resulted in adding more time and one more agency to the application process. (See Appendix I for a detailed discussion of the coordination efforts of other states.)

The solution should be capable of being applied statewide. Agency staffs from the regional offices of State agencies indicate there are similar problems, but that these problems and their solutions have regional variations. For example, the number of agencies, the resource concerns, and the decision-making criteria vary from region to region. It is therefore recommended that the proper approach should have regional tailoring coupled with statewide consistency.

We recommend that a statewide agency be designated to establish statewide consistency for improved application processing. This "supervising agency" would designate the "principal agencies" at the regional level, provide them with advice and assistance, and oversee the implementation of all recommendations assigned to it. Two existing State agencies are well suited to perform these supervisory functions. These are the Resources Agency and the Governor's Office of Planning and Research. Although both have many attributes, we recommend the Resources Agency, since it already has most of the agencies concerned with dredging within its administration.

The "principal agency" should be an existing regional regulatory agency with broad concerns and, if possible, with land use concerns. Where such exists, an agency approved under the Federal Coastal Zone Management Act should be given prime consideration, because these agencies can compel Federal compliance with their plan and permit decisions.

It would be the responsibility of this agency to develop common application materials, to assist applicants in understanding application materials and procedures, to develop joint processing procedures, to circulate joint comment requests among State and Federal agencies, to collect State agency comments, and provide a unified response to the Corps of Engineers (except for comments made under the Federal Fish and Wildlife Coordination Act or when there are statewide concerns), and to enforce established State agency time limits. Imposing these functions on an existing agency should require minimal additional personnel.

CHAPTER IV. RECOMMENDATION IMPLEMENTATION

The preceding chapters of this report analyzed the regulatory procedures undertaken in reviewing dredging projects in the State of California, with an emphasis on the Bay Area. In general, agencies successfully regulate dredging activities in the Bay Area in keeping with their legal mandates. A few problems have been noted, the causes of them have been discussed, and general recommendations for remedying the specific problems have been made. These remedies can be applied statewide (with regional variations in specific criteria) and, for the most part, can be enacted administratively. This chapter develops the recommendations in greater detail.

The recommendations are based on the belief that the government must continue to regulate dredging in a comprehensive and cautious manner in order to protect vital resources and provide a healthy environment. This belief, however, includes the strong feeling that government has a related responsibility to respond to dredging applicants in a timely, consistent, and reasonable manner. Delay and caution are not synonymous.

The implementation structure is directed at those agencies and laws involved in the regulation of dredging: The BCDC, the State Lands Commission, the State Water Resources Control Board and the Regional Water Quality Control Boards, the State Department of Fish and Game, the California Coastal Zone Conservation Commission and its successor agency, the Reclamation Board, the California Tahoe Regional Planning Agency, the State Resources Agency, and any other State agencies commenting on dredging applications, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the Environmental Protection Agency, the organic laws under

which they exercise their authority, and the National Environmental Protection Act, the California Environmental Quality Act, and the Coastal Zone Management Act of 1972.

Most of these recommendations, which are summarized in Table VI, can be carried out by the agencies themselves; the few which require legislative action are adoption of a policy resolution concerning application processing, adoption of a resolution calling for cooperation among Federal agencies, adoption of compulsory time limits, and finally, the holding of oversight hearings to determine the effectiveness of these recommendations. These recommendations should be understood to apply to those agencies' permitting and commenting actions involving dredging only. Approximately thirty such applications were submitted during 1975 in the Bay Area. They are not intended to apply to a project which involves activities other than dredging.

Formalization of Policies and Procedures

- I. Each agency regulating dredging should adopt regulations into the California Administrative Code to formalize the procedures used in the processing of applications or comments on applications. These regulations should include all administrative policies capable of being made into general rules other than those specifically designated for discretionary determination. They should include at least the following:
 - A. The criteria to be applied in differentiating between matters to be handled administratively and those requiring submission to the agency's policy-making body (if such a body exists).

TABLE VI
SUMMARY OF RECOMMENDATIONS

Recommendation	Implementation Body	Page Number of Recommendation	Page Number of Support Text
I. Adopt Administrative Regulations to guide procedures	Agencies	54	27, 32, 34-38, 47, 50
II. Adopt policies to guide decision-making	Agencies	56	27-32, 47, 50
III. Impose time limits to compel timely processing		56	19-26
A. & C. Permitting Agencies	Resources Agency & Agencies	57	21-26
B. Regional Water Quality Control Board	Legislature	58	21
D. Commenting Agencies	Resources Agency & Agencies	59	16-17, 22-24, 26, 48-49
IV. Clarify California Environmental Quality Act Guidelines regarding maintenance and small new dredging	Resources Agency	60	34-35
V. Authorize long-term approvals for maintenance dredging	Agencies	61	39-40, 50
VI. Interagency Relations		61	50-52
A. Designate "Supervising Agency"	Governor	62	51
1. Designate Principal agencies	Supervising Agency		51
2. Provide statewide guidance	Supervising Agency		51
3. Annual progress report to Governor and Legislature	Supervising Agency		
B. "Principal Agency"		62	52
1. Provide information	Principal Agency		43-44, 52
2. Prefiling discussions	Principal Agency		17, 43-44, 52
3. Receive applications	Principal Agency		42-43, 52
4. Issue joint public notice	Principal Agency & Corps		16-17, 48, 52
5. Hold joint hearings	Agencies & Corps		18-19, 52
6. Prepare standard application forms	Agencies & Corps		18-52
7. Define terms	Agencies		
8. Coordinate appropriate applications	Principal Agency		
9. Enforce time limits	Principal Agency		52
10. State position on permits	Governor		52
VII. Declaration of State policy	Governor & Legislature	64	24
VIII. Review budget and staff requirements		65	26-27, 49
A. Staff changes	Resources Agency & Agencies		26-27
B. Additional personnel for Fish and Game	Resources Agency & Legislature		26-27
IX. Alter notice requirements for waste discharge requirements	State Water Resources Control Board & Regional Water Quality Control Board	65	16
X. Oversight hearings	Legislature	66	
XI. Federal Agency Action	Governor & Legislature	66	11-15, 25, 27-32

- B. Provisions for handling insignificant or emergency matters.
- C. Time limits for the performance of specific functions.
- D. Requirements for completing, filing, and processing an application.
- E. Procedures for the solicitation of comments, circulation of notices, conduction of hearings, and issuance of permit documents.
- F. Appeal mechanisms and procedures.

Each of the regulatory agencies now has the authority to promulgate regulations and should do so by December 31, 1976.

- II. Each of these agencies should similarly formally adopt substantive policies and standards to establish the criteria for decision-making. They should be referred to in rendering permit decisions or in preparing comments on a project in order to clarify the basis for the decision. These policies should include a clear description of the agency's concerns, the relevant factors to be considered in evaluating a project, and the manner in which those factors are to be applied in the evaluation. They should be adopted only after the opportunity for public hearing and comment. Policies should be in enough detail to guide day-to-day decision-making. In particular, key phrases such as "significant water quality effects," "significant concentrations," and the like should be defined. Fish and wildlife policies on environmental impact, mitigation, and disposal criteria should describe the nature and scope of these policies and how they

are to be carried out. Resource policies of statewide importance should be developed in conjunction with the State Resources Agency. These policies should be established by December 31, 1976.

III. Time limits should be imposed on all permitting and commenting agencies to require the processing of applications and submission of comments within a reasonable period of time. If the time limit is not met, the application should be granted or the opportunity for commenting should be lost. BCDC currently has a ninety day time limit that compels action or automatically issues permits and has proven very workable for both applicants and the agency. Recommendations now before the Legislature for a permanent Coastal Commission recommend such time limits. The Tahoe Regional Planning Agency has experienced some difficulty with its time limit and provision for automatic approval. The bi-state compact under which the agency acts requires a dual majority, i.e., a majority vote from both the California and Nevada representatives. Courts have held that in lacking a dual majority the Agency has failed to act, neither approving nor disapproving the application. A failure to act within sixty days, such as by failing to reach a dual majority, results in automatic approval of applications. This procedural difficulty is unique to the Tahoe Regional Planning Agency and should not affect the other agencies.

Time limits on comments generally are established by the permitting agencies, but these time limits are not concurrent and there are no sanctions to encourage a speedy response.

- A. The Resources Agency, within the limits of its authority, should adopt time limits for all permitting activities relating to dredging carried out by the Department of Fish and Game, the Board of Reclamation, the California Tahoe Regional Planning Agency, the BCDC, the State Lands Commission, and for certification activities of the State Water Resources Control Board. These time limits should adhere to the standards listed in paragraph "C."
- B. The Legislature should amend Section 13264(a) of the Porter-Cologne Act to reduce the existing time limit for applications for waste discharge requirements for dredging projects from one hundred and twenty days to ninety days and to adhere to the standards listed in paragraph "C." (This time limit is made solely to expedite action on dredging applications. It is recognized, however, that special time limits applying only to dredging applications may not be appropriate since the agencies regulate numerous other activities.)
- C. For State Permitting Agencies:
 - 1. Final action shall not be taken until the deadline for comment receipt is passed but shall occur within

ninety days from date of filing complete application materials. The determination that an application is complete should be made by each permitting agency. An agency may consider an application incomplete because of pending litigation concerning the project, or the need to prepare an environmental document.

2. Failure to act within that time should result in that agency's permit being automatically issued. (The State Lands Commission, as a property owner, should be exempt from the sanction of automatic approval.)
 3. Extensions of time limits should be available only when the applicant agrees.
 4. In most cases, agencies should be able to act well before the deadline. State agencies should establish criteria for minor projects for which review should be completed as a general rule in specified periods of less than ninety days. Emergency applications should be processed immediately. These refinements should be prepared by affected agencies and approved by the Resources Agency.
- D. The Resources Agency should adopt time limits for all State agencies commenting on dredging applications either to other State agencies or to Federal agencies. These limits should adhere to the following standards:
1. Comments on applications should be submitted within thirty days from the date the request for comments is issued.

2. Failure to comment within that time should constitute a statement of "no comment" and prevent the agency from commenting at a later date unless:
 - a. A time extension was granted prior to the expiration of the deadline by the principal agency (explained below) based on acceptable reasons; or
 - b. If the time limit is exceeded, the commenting agency's director determines that more time is needed or that subsequent comments are necessary because of a significant change in the project, the receipt of new information, or a clear oversight. The director must state why additional time is necessary. The principal agency should not grant an extension unless the allotted time was demonstrably inadequate.
3. Multiple comments by any State agency on a given project application should, so far as is practical, be consistent, and the submission of inconsistent comments should require the agency's director to specify why there are discrepancies.

IV. Although environmental documents are usually not a significant problem with respect to dredging because of their infrequent preparation, clarification of some aspects of the California Environmental Quality Act Guidelines concerning dredging would eliminate some uncertainty regarding categorical exemptions. The Resources Agency is currently revising the California Environmental Quality Act Guidelines and

should specify new dredging of 10,000 cubic yards or less within a twelve month period and maintenance dredging as an example of an existing class of categorical exemption. This exemption would allow the revocation of the exemption for projects requested for specific locations or where cumulative impacts of related projects may cause a significant impact on the environment.

- V. All aspects of an agency's concerns, including anticipated maintenance dredging, should be considered in the initial evaluation of a project. This should include long-term authorizations for maintenance or other periodically recurring activities (not to be construed to imply a vested right to continue a project indefinitely) subject to conformance with any subsequently-adopted policies. Authorizations should be subject to necessary condition such as periodic reevaluation, consistency with existing disposal policies, and submittal of long-term disposal plans by the applicant. Expeditious staff review of maintenance projects and sediment contamination levels could be made without repeating lengthy notice periods, holding public hearings, or undertaking other procedures appropriate to new activities.

Interagency Relations

Chapter III of this report evaluates the dredging application coordination experiment that was conducted by BCDC. The experiment suggests that full formal coordination of dredging applications is not advisable, but that some form of cooperative effort is necessary.

VI. It is recommended that the responsibilities for ensuring statewide consistency and cooperative efforts at the regional level be carried out within the framework of existing State agencies.

A. A "supervising agency" having statewide jurisdiction over agencies that regulate dredging should be designated by the Governor. It is recommended that the Resources Agency be so designated, although other agencies may be considered as well.

The responsibilities of this agency with respect to dredging would be to:

1. Designate "principal agencies" in appropriate regions, when in the judgment of the supervising agency, a principal agency is needed to carry out and manage their assigned responsibilities.
2. Provide guidance and information to all affected agencies in order to assist them in carrying out the recommendations of this study, including the establishment of administrative procedures, policies, and time limits by December 31, 1976.
3. Annually report to the Governor and the Legislature for a period of three years on the progress in carrying out these recommendations.

B. A series of regional agencies--"principal agencies"--should be designated by the supervising agency, where appropriate, to serve as the focal point of State and Federal dredging

permit activities undertaken within the region. The agency designated should be an existing permit granting agency with broad concerns. An approved Coastal Zone Management Agency would be preferable because Section 306 of the Coastal Zone Management Act provides that Federal actions must be consistent with the management agency's plan. In the Bay Area we believe BCDC should be designated as the "principal agency."

The responsibilities for the "principal agency," as determined by the "supervising agency," should include the following:

1. Provide applicants with information on all required State and Federal authorizations and copies of the necessary forms.
2. Encourage applicants to speak with or write to each involved agency prior to submitting an application.
3. Receive applications prior to their submission to any other agency.
4. Participate in the issuance of a Public Notice jointly with the Corps of Engineers to solicit agency and public comments on behalf of all State and Federal agencies.
5. Coordinate joint public hearings with the Corps and among the State agencies when necessary and appropriate.
6. Draft and adopt an application form or forms acceptable to all State agencies.

7. Participate with other State agencies in defining through regulation the terms "major," "minor," "insignificant," and "emergency" projects.
8. Inform the "supervising agency" of instances where it determines it should not be the "principal agency" so that an alternative designation can be made.
9. Enforce time limits and extend commenting time limits for cause.
10. Serve as the agency responsible for "a single State position" for all dredging activities requiring a Department of the Army permit under Section 404 of the Federal Water Pollution Control Act and Section 10 of the Rivers and Harbors Act of 1899. This responsibility would require collecting comments, attempting to resolve conflicting State comments, and submitting to the Resources Agency unresolvable conflicts in comments. Department of Fish and Game comments submitted under the Fish and Wildlife Coordination Act should continue to be transmitted to the Corps of Engineers in their entirety.

Residual Implementation Elements

A number of other steps should be taken to ensure the proper implementation of the recommendations at the State and local level.

- VII. It is recommended that State policy make it clear that all State agencies are to process dredging permit applications and comment requests as expeditiously as possible without jeopardizing natural

resources or environmental controls, that all State agencies are to abide by established time limits, that the time limits are to be considered maximum limits rather than a normal operating goal and that, whenever possible, State agencies shall consider project applications concurrently. This policy could be expressed in the form of a directive from the Governor and/or a Legislative resolution.

VIII. Adequate funds and personnel must be provided so that time limits for processing can be met and the recommended regulations, policies, and procedural changes called for can be adopted and implemented by December 31, 1976.

- A. Staff changes that might be necessary to implement these recommendations, if any, should be minor because many of the recommendations are anticipated to reduce agency workloads.
- B. The Department of Fish and Game regional staffs, in particular, should be provided with sufficient personnel to respond to comment requests within the recommended time limits.

IX. The Regional Water Quality Control Boards and the State Water Resources Control Board are required to publish notices of proposed waste discharge requirements and certifications of conformance in a newspaper. It is therefore recommended that this requirement be revised to allow all the Boards the flexibility of participating in joint notices with the

Corps of Engineers without having to duplicate the notice in a newspaper.

- X. It is recommended that the Legislature review progress in improving the processing of dredging applications by holding oversight hearings during early 1977. These hearings could assess the status and effect of the recommendations in this report, and explore the need for any additional legislation.

Federal Agency Action

A major portion of the regulatory activity that surrounds dredging involves Federal agencies, principally the Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency. Many of the problems that State agencies have also occur for Federal agencies.

- XI. It is recommended that the Legislature adopt a joint resolution endorsing Federal-State cooperation in the regulation of dredging and urging the Federal Government to take certain steps with respect to Federal agencies that are similar to those recommended for State agencies.

This resolution could request:

- A. A declaration of Federal policy that all Federal agencies involved in the regulation of dredging are to act as expeditiously as possible without jeopardizing natural resources or environmental controls.

- B. Imposition of time limits for application processing and comment preparation. (This is particularly crucial for submission of comments and resolution of conflicts under the Fish and Wildlife Coordination Act.)
- C. Cooperation by Federal agencies with appropriate State agencies in developing mutually acceptable regulatory policies including procedures and standards for evaluating dredging and disposal plans.
- D. Participation in joint public notices and public hearings, and standard application forms.
- E. Federal agencies to advise State permit granting agencies of any "overriding national factors of the public interest" or other Federal concerns that should be considered in making State level decisions.
- F. Authorization for State agencies to carry out Federal review functions with respect to dredging when State policies and procedures are at least as stringent as the corresponding Federal policies and procedures.
- G. Expansion of the use of the "Letter of Permission" form of approval by the Corps of Engineers for projects that are insignificant or where no issues of special significance to the Federal Government exist and the projects have been subject to an extensive State regulatory program.
- H. Development by the Corps of Engineers of a "General Permit" under Section 404 of the Federal Water Pollution Control Act for all maintenance dredging.

Conclusion

These are the recommendations that the BCDC as the study agency proposes. Some require State legislative action. Most can be implemented immediately by the regulatory agencies themselves without legislative action. Change is always difficult, but the pressures today are strong for a change in excessive and unnecessary regulations. If the changes are made haphazardly, the results will be unpredictable and possibly harmful to the environment we all want to protect. The approach proposed here will simplify the regulatory maze and speed application processing without undue disruption of the affected agencies' other activities or jeopardizing the critical protection of natural resources.

APPENDIX A

SENATE BILL NO. 2418, CHAPTER 1274,

AND

INTERAGENCY AGREEMENT

CHAPTER 1274

An act to add Chapter 5 (commencing with Section 160) to Division 1.5 of the Harbors and Navigation Code, relating to dredging, and making an appropriation therefor.

[Approved by Governor September 23, 1974. Filed with Secretary of State September 23, 1974.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 160) is added to Division 1.5 of the Harbors and Navigation Code, to read:

CHAPTER 5. DREDGING

160. The Legislature recognizes that the orderly and efficient processing of dredging permits is essential to the movement of the waterway commerce of the state, as well as the use of our recreational waterways and marinas, and that the present procedures often include frequent long delays in processing such permits. It is the intent of the Legislature to coordinate and expedite processing of dredging permit applications through state agencies and to encourage cooperation with federal agencies, to the extent permitted by law. It is also the intent of the Legislature to study and establish an interim procedure for processing applications in that area described in Government Code Section 66610 for maintenance dredging of any amount or new dredging of 100,000 cubic yards or less within a 12-month period. It is also the intent of the Legislature that the Resources Agency shall coordinate the permitting procedures of any state agency required or permitted by law to review such applications, shall assure that such agencies respond within a reasonable time on a particular application, shall cooperate with federal review agencies in expediting applications through such agencies, and shall report to the Legislature concerning the future processing of dredging permits through state agencies, the manpower needs of such agencies relative to the efficient processing of permits, the establishment of administrative procedures and regulations necessary for the orderly processing of permits, and the future relationship between state and federal agencies relative to the review of such permits.

161. The Resources Agency shall be the state coordinating agency for all applications for permission to conduct maintenance dredging in the area described in Government Code Section 66810 of any amount or new dredging of 100,000 cubic yards or less within a 12-month period made to any state agency required or permitted

application is complete, the Resources Agency shall so notify the applicant in writing. If any such state agency advises that the application is incomplete, the Resources Agency shall notify the applicant as to what additional information is needed, and require the applicant to take such action as may be necessary to make the application complete within a reasonable time.

163. Upon receipt of the copy of the complete application and other necessary materials, each affected state agency having no time limit for reporting its decision shall review it pursuant to its established procedures, except that it shall report its decision, findings, or recommendations to the Resources Agency not later than 60 days following receipt of the complete application. If the affected agency has a period within which to report, the agency shall report the current status of the application within the agency not later than 60 days following receipt of the complete application. The Resources Agency shall at such time notify the applicant of any decision, findings, or recommendations, or the status of the permit.

167. If an affected agency does not respond within the 60 days, or within the time specified by law, it shall be deemed to have no comment on the application. If it does respond and if it has made a decision regarding the application, it shall submit a statement setting forth reasons for the decision.

168. The Resources Agency shall compile the decisions, reports, and findings of the affected state and local agencies from which such material has been received. If any agency having legal authority to deny the permit has properly denied the permit, the permit shall be declared denied. If the permit is properly granted or denied, the Resources Agency shall within 10 days forward its report containing all comments received and a summary to the applicant and to the Corps of Engineers.

169. The Resources Agency shall report to the Legislature its evaluation of the permit procedures authorized by this chapter on or before February 1, 1976. This report shall identify problems in permitting procedures, make recommendations concerning ways to expedite the process, and advise the Legislature on the feasibility of a statewide application of the new procedures.

170. This chapter shall not be operative after July 1, 1976.

SEC. 2. The sum of twenty-seven thousand dollars (\$27,000) is hereby appropriated from the General Fund to the Resources Agency for the costs of administering this act.

INTERAGENCY AGREEMENT

STATE OF CALIFORNIA
STD. 13 (REV. 3-71)

NUMBER
30-026

THIS AGREEMENT is entered into this 1st day of November, 19 74,
by and between the undersigned State Agencies:

(Set forth services, materials, or equipment to be furnished, or work to be performed, and by whom,
time for performance including the terms, date of commencement and date of completion, and
provision for payment per 1280 and 8760-8760.2 SAM.)

Distribution:

Agency providing services
Agency receiving services
Department of General Services
(unless exempt from DGS approval)
Controller

Scope of Agreement

The San Francisco Bay Conservation and Development Commission agrees to perform the work mandated by passage of Senate Bill 2418 on behalf of the Resources Agency. This mandate includes: the establishment of a temporary coordination procedure for the processing of applications for permission from State agencies for certain dredging activities within BCDC's jurisdiction, and the preparation of a report evaluating the permit processing procedures with the specific purpose of recommending measures applicable statewide which will expedite the processing of applications and make the regulations and procedures more efficient.

The attached syllabus, entitled Attachment A, Implementation of Senate Bill 2418 (to be conducted by the San Francisco Bay Conservation and Development Commission for the State Resources Agency), describing the background, funding, scope, and time schedule for this study is hereby incorporated into and made an integral part of this Agreement.

All work performed by BCDC under this Agreement shall take place in the City and County of San Francisco and in such other counties in California as may be necessary.

The term of this Agreement is from the date of its approval by the Department of General Services to June 30, 1976.

(Cont'd on page 2)

NAME OF STATE AGENCY

Resources Agency
CALLED ABOVE (Short Name)

Resources
AUTHORIZED SIGNATURE

TITLE

Deputy Secretary for Resources

(Continued on 2 sheets which are hereby attached and made a part hereof)

NAME OF STATE AGENCY

San Francisco Bay Conservation
and Development Commission
CALLED ABOVE (Short Name)

BCDC
AUTHORIZED SIGNATURE

TITLE

CHARLES R. ROBERTS
Executive Director

FUND

General

DEPARTMENT OF GENERAL SERVICES APPROVAL
(UNLESS EXEMPT 1281 SAM)

APPROVED

DEC 19 1974

BY *W. E. Larson*
Deputy Director

AMOUNT OF THIS ESTIMATE

\$ 27,000.00

UNENCUMBERED BALANCE

\$ None

ADJ. INCREASING ENCUMBRANCE

\$

ADJ. DECREASING ENCUMBRANCE

\$

I hereby certify upon my own personal knowledge that budgeted funds
are available for this encumbrance.

SIGNATURE OF ACCOUNTING OFFICER

[Signature]

T.B.A. NUMBER

S.R. NUMBER

DATE

12-5-74

I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1201.13 have
been complied with and this document ☐ is exempt ☒ is not exempt from review by the Department of Finance.

SIGNATURE OFFICER SIGNING ON BEHALF OF AGENCY

[Signature]

DATE

DEC 4 1974

San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue, Room 2011
San Francisco, California 94102
Page 2

(Cont'd from page 1)

BCDC shall take the steps necessary to be adequately prepared for the commencement of the coordinating function required by this act, including hiring of personnel, and securing office space and equipment. The expenditure of BCDC's funds for preparation shall be included in the total expenditure for services provided under this Agreement, but shall not exceed the payments listed below.

Reimbursement

The total amount payable under this Agreement shall not exceed EIGHTY-ONE THOUSAND DOLLARS (\$81,000) and shall be payable to BCDC in advance according to the following schedule:

<u>Amount</u>	<u>Date</u>	<u>Event</u>
\$27,000.00	January 1, 1975	Effective date of the Act
\$54,000.00	July 1, 1975	Commencement of FY 1975-1976

The amount payable to BCDC on July 1, 1975, is contingent on appropriations in the FY 1975-1976 Resources' budget. BCDC shall provide full justification for the necessary funds.

The Resources Agency agrees to pay to the San Francisco Bay Conservation and Development Commission the amount outlined in the above schedule, upon submission of invoices, in triplicate, for each payment. Each invoice shall include BCDC's complete name and address, the Agreement number, the amount of the invoice, a brief statement as to the nature of the invoice, and the original signature of a BCDC official or officer on each of the three copies of the invoice.

Delegation

The attached letter, Attachment B, dated October 11, 1974, from Norman B. Livermore, Secretary for Resources, to BCDC Chairman William D. Evers delegating the work mandated by passage of Senate Bill 2418 to BCDC is also hereby incorporated into and made an integral part of this Agreement.

Resolution

The attached extract and certified copy of minutes of the October 17, 1974, San Francisco Bay Conservation and Development Commission meeting, Attachment C, authorizing the execution of this Agreement by the Executive Director on behalf of the Commission is also hereby incorporated into and made an integral part of this Agreement.

Approvals

This Agreement is subject to the approvals of the Departments of Finance, and General Services.

(Cont'd on page 3)

San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue, Room 2011
San Francisco, California 94102
Page 3

(Cont'd from page 2)

The Resources Agency agrees to pay the San Francisco Bay Conservation and Development Commission the cost of performance hereunder and to pay in advance \$27,000.00 on January 1, 1975, and \$54,000.00 (or the amount appropriated in the Resources Agency Budget for this work) on July 1, 1975. It is agreed between the parties hereto that upon completion of the services hereunder, the actual cost of rendering said services shall be computed in accordance with the provisions of Section 8760 of the State Administrative Manual and said payment adjusted in accordance with the provisions of Article 1, Chapter 3, Part 1, Division 3, Title 2, Government Code.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 357-3686



MELVIN B. LANE
Chairman

WILLIAM D. EVERS
Vice-Chairman

JOSEPH E. BODOVITZ
Executive Director

ATTACHMENT A

IMPLEMENTATION OF SENATE BILL 2418
to be Conducted by the
SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
for the
STATE RESOURCES AGENCY

Background

Senate Bill 2418 passed by the California Legislature and signed into law by the Governor requires that the Resources Agency (a) establish a temporary procedure which will coordinate and expedite all applications to State agencies for permission to conduct certain dredging activities within the area of the San Francisco Bay Conservation and Development Commission's jurisdiction, and, to the extent permitted by law, to encourage the cooperation of Federal agencies in these matters; and (b) report to the Legislature on or before February 1, 1976, on the future processing of dredging permits by State agencies. This report should (1) identify problems in permitting procedures; (2) make recommendations concerning efficient ways to expedite the process; (3) describe the manpower needs for the efficient processing of permit applications; (4) propose administrative procedures and regulations to implement the recommendations; (5) discuss the future relationship between State and Federal agencies relative to the review of such permit applications; and (6) advise the Legislature on the feasibility of applying the new procedures statewide.

Funding

Senate Bill 2418 appropriated \$27,000.00 to the Resources Agency for the cost of administering the act during the remainder of FY 1974-1975. An additional \$54,000.00 is to be included in the Resources Agency Budget for FY 1975-1976. The Resources Agency will provide the entire \$81,000.00 to BCDC for the implementation of the Act. Justification for the cost of administering the Act is attached to this syllabus.

Scope of Work

The purpose of the interim coordination procedure and report is to test and evaluate the concept of a lead agency or clearing house approach to the processing of a common application for dredging permits from involved State agencies. The report is to be on permit processing procedures with the specific purpose of recommending measures which will expedite the processing of permit applications and make the regulation procedures more efficient. BCDC will be responsible for taking the necessary steps to ensure the intent of the Act is fully implemented within a reasonable time after the Act becomes effective.

ATTACHMENT A
IMPLEMENTATION OF SENATE BILL 2418
Page 2

Time Schedule

Preparatory work should begin as soon as possible after the Interagency Agreement between the San Francisco Bay Conservation and Development Commission and the State Resources Agency is approved so the necessary procedures and regulations can be drafted, the required personnel can be recruited, and a common application form can be prepared so that the coordination activities can commence as soon as reasonable after January 1, 1975. The report shall be presented to the Legislature by February 1, 1976, and efforts necessary to the implementation of its recommendations be provided until July 1, 1976, the date the provisions of Senate Bill 2418 are no longer operative.

BUDGET ESTIMATE FOR IMPLEMENTATION
OF
SENATE BILL 2418 (SENATOR MARKS)

PERSONNEL SERVICES	<u>18 Month Cost</u>	
1 Associate, Technical (15,048 x 1.5)	\$ 22,572	
1 Assistant, Technical (12,372 x 1.5)	18,558	
1 Intermediate Clerk (6,456 x 1.5)	<u>9,684</u>	
Total Salaries	\$ 50,814	
Benefits (13%)	<u>6,606</u>	
Total Salaries		\$ 57,420
OPERATING EXPENSES AND EQUIPMENT		
General Expense (equipment rental, paper and envelopes, miscellaneous office supplies, reproduction, books and publications, legal advertising, etc.)	\$ 5,500	
Communications (postage and telephone)	3,500	
Travel-in-State (car pool, travel expenses, etc.)	1,000	
Facilities Operation (rent)	2,500	
Consultant and Professional Services (personnel services, accounting services, business services, biological consultant, engineer- ing consultant)	6,500	
Printing Final Report	<u>4,000</u>	
Total Operating Expenses		\$ 23,000
Grand Total		<u>\$ 80,420</u>

NORMAN B. LIVERMORE, JR.
SECRETARY

RONALD REAGAN
GOVERNOR OF
CALIFORNIA

OFFICE OF THE SECRETARY
RESOURCES BUILDING
1416 NINTH STREET
95814



Department of Conservation
Department of Fish and Game
Department of Navigation and
Development
Department of Parks and Recreation
Department of Water Resources

Air Resources Board
Colorado River Board
San Francisco Bay Conservation and
Development Commission
Solid Waste Management Board
State Lands Commission
State Reclamation Board
State Water Resources Control Board
Regional Water Quality Control Boards

THE RESOURCES AGENCY OF CALIFORNIA
SACRAMENTO, CALIFORNIA
OCT 11 1974

RECEIVED
OCT 24 1974

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Mr. William D. Evers, Chairman
Bay Conservation and Development
Commission
Transamerica Building
600 Montgomery Street, 21st Floor
San Francisco, California 94111

Dear Mr. Evers:

On September 23, 1974, Governor Reagan signed into law Senate Bill 2418 requiring the Resources Agency (a) to establish an interim procedure which will coordinate and expedite all applications to State agencies for permission to conduct certain dredging activities within the area of the San Francisco Bay Conservation and Development Commission's jurisdiction, and, to the extent permitted by law, to encourage the cooperation of federal agencies in these matters; and (b) to report to the Legislature on or before February 1, 1976, on the future processing of dredging permits by State agencies. This report should (1) identify problems in permitting procedures; (2) make recommendations concerning efficient ways to expedite the process; (3) describe the manpower needs for the efficient processing of permit applications; (4) propose administrative procedures and regulations to implement the recommendations; (5) propose the future relation between State and Federal agencies relative to the review of such permit applications; and (6) advise the Legislature on the feasibility of applying the new procedures statewide.

I hereby delegate BCDC to carry out the provisions of this law on behalf of the Resources Agency. Please prepare an intra-agency agreement for this work for the budgeted amount of \$81,000. An appropriation of \$27,000 is provided in the bill as an augmentation to BCDC's current budget. The additional \$54,000 required to complete the study will be included in the Resources Agency's budget for FY 1975-76. BCDC will be expected to provide the justification for these funds.

Sincerely yours,

John A. Livermore
John A. Livermore, Jr.

cc: See attached sheet

Mr. William D. Evers

2

OCT 11 1974

cc: Verne Orr, Director, Department of Finance
Attn: Richard Bayquen
State Lands Commission
Attn: Edward N. Gladish
G. Ray Arnett, Director, Department of Fish and Game
Attn: Jack Fraser, Region III
U. S. Army Corps of Engineers
Attn: Col. Henry A. Flertzheim, Jr.
John R. Teerink, Director, Department of Water Resources
Senator Milton Marks
Anthony J. Taormina, Senate Select Committee on the
Maritime Industry

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686



ATTACHMENT C

EXTRACT COPY OF MINUTES OF SAN
FRANCISCO BAY CONSERVATION AND
DEVELOPMENT COMMISSION MEETING
OF OCTOBER 17, 1974

12. New Business. Chairman Evers said Senate Bill 2418 (Marks), designating BCDC as the lead agency in coordinating permit applications for certain dredging projects, has been passed by the Legislature and signed by the Governor. He said L. Thomas Tobin, BCDC Staff Engineer, is here today to request the Commission to approve a resolution authorizing the Executive Director to enter into an Interagency Agreement with the Resources Agency on behalf of the Commission in this regard.

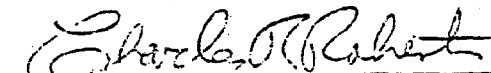
Mr. Tobin said as previously announced, Senate Bill 2418 was passed by the Legislature and signed into law by the Governor. He indicated that the bill directs the Resources Agency to establish a lead agency to coordinate the processing of certain dredging applications, in addition to preparing a report on future administrative procedures which will expedite permit processing on a permanent basis.

He said Secretary Livermore has delegated this work to BCDC and has requested that an Interagency Agreement be drawn. He said the staff requests that the Commission adopt a resolution authorizing the Executive Director on behalf of the Commission to enter into such an agreement.

MOTION: Commissioner McCorquodale moved that the Commission, acting through its Executive Director, be authorized to enter into an Interagency Agreement with the State Resources Agency to perform, on behalf of the State Resources Agency, the work mandated by passage of Senate Bill 2418 and that the term of this agreement will commence on the date all approvals are obtained until June 30, 1976, and shall provide approximately \$81,000 to BCDC for compensation, seconded by Commissioner Cuneo. The motion was unanimously approved.

C E R T I F I C A T E

I hereby certify that the above is a true extract copy of the pertinent section of this Commission's minutes of October 17, 1974.


CHARLES R. ROBERTS
Executive Director

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557 - 3686

January 24, 1975

TO: All Commissioners and Alternates
FROM: Charles R. Roberts, Executive Director
SUBJECT: APPROACH TO IMPLEMENTATION OF SENATE BILL 2418 (MARKS)
(For Commission consideration on February 6, 1975)

The regulation of dredging is typical of many kinds of governmental regulation in the Bay. Autonomous Federal and State agencies, created to regulate activities that are sometimes independent and sometimes overlapping under often unrelated legislation, have created a complex system characterized by lengthy and often complicated procedures requiring considerable effort on the part of both agencies and applicants. In an effort to simplify some of these procedures without sacrificing essential environmental safeguards, the Legislature last year passed Senate Bill 2418, the Marks dredging bill. This legislation calls on the Resources Agency to establish temporary procedures for coordinating and expediting applications to State agencies for certain kinds of dredging within BCDC jurisdiction. The law also encourages the participation of Federal agencies in the process to the extent permitted by law. The culmination of this effort will be a report under the auspices of the Resources Agency to the Legislature containing recommendations on the processing of permit applications based on the Commission's experience with the temporary coordination procedure.

The Secretary for Resources, by inter-agency agreement, has delegated to BCDC all Resources Agency responsibilities under SB 2418, and through this analysis of current regulatory procedures, and the relation between Federal and State agencies, the Commission has a unique opportunity to take the lead in proposing needed improvements in existing procedures. Furthermore, although dredging is a limited activity and San Francisco Bay is a limited geographical area, the concepts and procedures developed and tested in this effort may next be applied to other activities and areas in the Bay and elsewhere in California. Moreover, because the law calls for recommendations on statewide application of these concepts, as well as on State-Federal regulations, the Commission's work could well have impact nationwide.

The remainder of this memorandum sets forth the staff's recommended approach to the responsibilities delegated to the Commission under SB 2418.

1. COORDINATION

The staff proposes to conduct the coordination effort with the minimum personnel required. Emphasis will be placed on seeking improved, permanent procedures that will remain effective after the 18-month temporary coordination period ends and testing the value of a single agency being responsible for coordination. It is estimated that this will require approximately one-half the time of a professional staff person until the temporary procedures automatically terminate on July 1, 1976.

Senate Bill 2418 requires adoption of a standard application form for dredging permits. Accordingly, the staff has developed the enclosed standard application form in consultation with the other agencies involved in regulating dredging in the Bay Area.

The staff recommends that the Commission approve this form with the understanding that it is a temporary form that will be revised as new information becomes available or new procedures are suggested.

2. REPORTS AND RECOMMENDATIONS

The legislation also calls for the Resources Agency to submit a report to the Legislature by February 2, 1976, recommending measures to expedite the processing of dredging permit applications. Pursuant to an inter-agency agreement, BCDC is to prepare the report for the Secretary for Resources. The staff believes that every effort should be made to formulate practical recommendations that will survive after the temporary procedures set up by SB 2418 expire. The staff has already contacted agencies, groups, and individuals interested in dredging, in an effort to involve them in the important decisions to be made during the study.

A detailed background report will be written as the basis for the findings and recommendations incorporated in the final report to the Legislature. The background report will be in two segments. The first segment will address the following issues:

- (a) The need for regulation of dredging;
- (b) Procedures existing prior to the legislation; and
- (c) Powers, overlaps and gaps among the agencies that regulate or review dredging permit applications.

The second segment of the background report will focus on:

- (a) An evaluation of the on-going temporary coordination effort;
- (b) Responsible ways to expedite the permit process;
- (c) Personnel and budget requirements for the efficient processing of dredging applications;
- (d) Implications of new information about dredging; and
- (e) Environmental impact assessment requirements.

Drafts of both segments of the background report will be reviewed and discussed with interested parties, most importantly the Dredge Advisory Group, whose membership includes representatives from all agencies involved in regulating Bay dredging. Revised drafts will be sent to special advisors selected for this study. A list of our special advisors is enclosed.

Complete background report segments will be condensed to easily understood summaries, with proposed findings and recommendations added. These will be given wide public distribution, with the full report segments being available to interested members of the public. The staff would recommend that the Commission then hold public hearings on each segment of the report and consider the proposed findings and recommendations.

Once the Commission has considered and approved both segments of the background report and the proposed findings and recommendations, the information in the background report, together with the proposed findings and recommendations will be integrated into a draft of the final report to the Legislature. This draft will be distributed for review in the same fashion as the segments of the background report and then presented to the Commission for consideration and adoption.

The staff estimates that preparation of the two segments of the background report and the preparation of the final report will require one person working full-time and another person working half-time. Once complete, the same effort will be needed until SB 2418 expires in 1976 to follow-up with the Legislature on the recommendations in the final report.

Staff Recommendation. The staff recommends that the Commission approve this approach to carrying out the Commission's responsibilities under SB 2418.

ADVISORS ON SENATE BILL 2418 STUDY

Ronald R. Brill, San Francisco Bay Area Council;	Jack Fraser, Department of Fish and Game;
Frank Goodson, Resources Agency;	Robert Langner, California Marine Affairs and Navigation Conference;
Richard M. Farrell, Marina and Recreation Association;	William Leet, National Marine Fisheries Service;
William T. Davoren, California Coastal Zone Conservation Commission;	Senator Milton Marks, Senate Select Committee on Maritime Industry;
Paul DeFalco, Environmental Protection Agency;	Cmdr. Phillip Parisius, U.S. Navy;
Fred Dierker, San Francisco Bay Regional Water Quality Control Board;	Dr. R. Ritschard, Save San Francisco Bay;
Joseph E. Duda, Dredging Contractors' Association;	Felix Smith, U.S. Fish and Wildlife Service;
Col. H. A. Flertzheim, Jr., U.S. Army Corps of Engineers;	Frank Torkelson, Department of Navigation and Ocean Development; and
William F. Northrop, State Lands Commission;	Professor Eugene Lee, Institute of Governmental Studies

APPENDIX B
APPLICATIONS AND PROJECTS

APPENDIX B APPLICATIONS AND PROJECTS

This appendix contains some background information on the type and amount of dredging done in San Francisco Bay. Between January 1, 1970, and June 1, 1975, BCDC acted on 124 applications for dredging permits. An annual average of twenty-eight projects accounted for approximately 3,500,000 cubic yards of dredging. Federal agencies accounted for an additional annual average of 6,900,000 cubic yards. Table VII classifies applicants according to their predominant activity and shows the average annual number of applicants and dredging volume. Federal agencies, primarily the Corps of Engineers and Navy, are also included, although they are not required to apply for BCDC permits.

Sixty percent of the applications acted on by BCDC were for routine maintenance activities of the kind that can be expected to recur periodically. About 50 percent of the applications were for dredging projects of 10,000 cubic yards or less. Figure 3 compares the relation between the number of applications and the dredge quantity.

TABLE VII

AVERAGE ANNUAL NUMBER OF APPLICATIONS
AND
VOLUME OF DREDGING BY ACTIVITY
(January 1, 1970, to June 1, 1975)

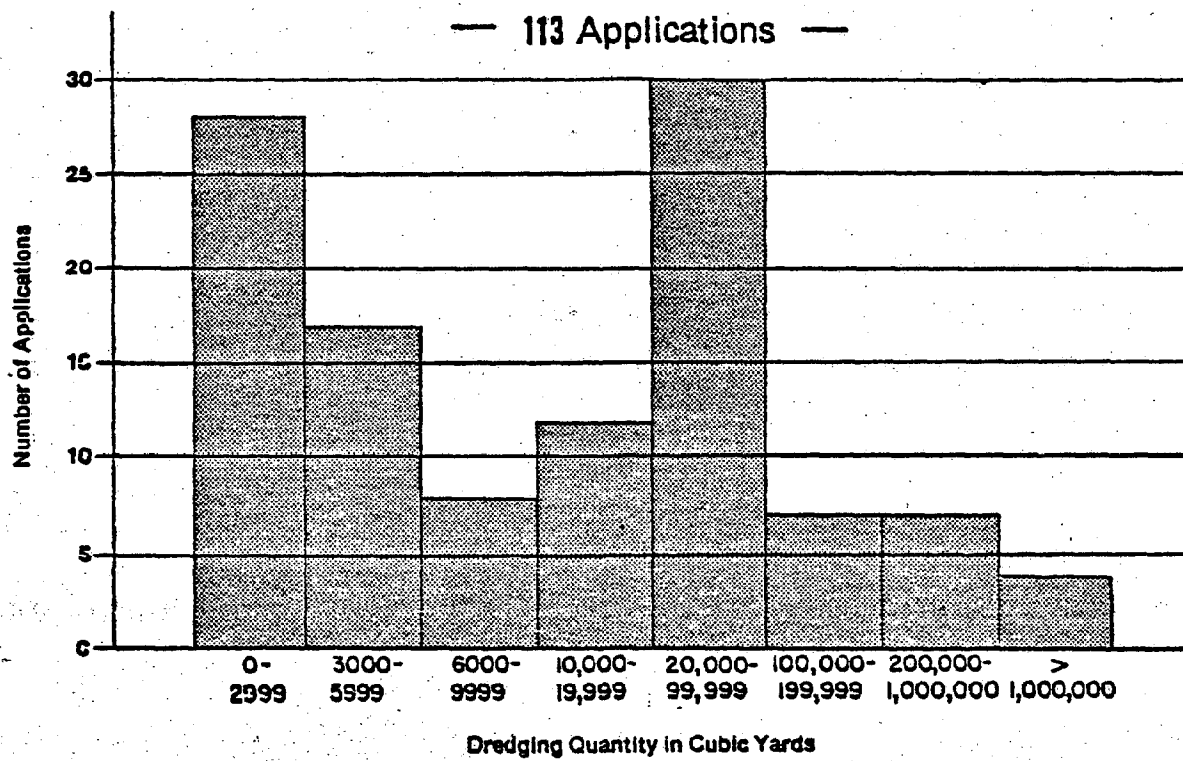
<u>Applicant Activity Category</u>	<u>Number of Applications</u>	<u>Cubic Yards of Dredging</u>
Ports	8	2,100,000
Recreational Facilities	7	530,000
Resource Production ¹ (sand, salt, and shells)	2	68,000
Petroleum Facilities	2	250,000
Public Works (flood control, sewage, etc.)	8	80,000
Public Transportation	<u>1</u>	<u>430,000</u>
Sub Total	<u>28</u>	<u>3,458,000</u>
Federal Agencies ²	-	-
Facilities (primarily navy)	-	1,500,000
Navigation Channels	<u>0</u>	<u>5,400,000</u>
Sub Total	28	<u>6,900,000</u>
TOTALS	<u>28</u>	<u>10,358,000</u>

1. Includes both those who dredge sand and shells, and those who dredge channels to facilitate the production of salt.

2. The number of Federal projects comprising these figures was not estimated.

FIGURE 3

Size Classification of Dredging Projects 1/70 to 6/75



APPENDIX C

LEGAL REGULATIONS AND ENVIRONMENTAL
IMPACT REQUIREMENTS

APPENDIX C

LEGAL REGULATIONS AND ENVIRONMENTAL
IMPACT REQUIREMENTS

Dredging is subject to a wide variety of local, State or Federal laws, ranging from city and county zoning ordinances, to the Federal National Environmental Policy Act and the California Environmental Quality Act, to the Rivers and Harbors Act of 1899, which gave the U. S. Army Corps of Engineers authority to require permits for work in the navigable waters of the United States. Laws that affect dredging cover a fairly wide legislative spectrum involving a number of different agencies. This appendix summarizes the most important legislation according to type, e.g., land use, navigation, and water quality.

A. Land Use Regulation — Local

Local governments, including some special purpose districts such as ports or flood control districts, have broad powers to protect the health, safety, and welfare of their citizens. These powers relate to dredging in two ways. First, under state law local governments must have general plans to guide land use decisions; second, local ordinances on zoning and permit requirements may affect dredging projects. Local governments usually regulate dredging by reviewing applications for building, grading, drainage, and health permits.

Yet even though the power to directly control dredging exists, many local governments do not use it. In the Bay Area, the most common reaction among local governments to a dredging application is indifference. Two major exceptions are Marin County and the City of Alameda, both of which have fairly stringent ordinances controlling dredging within their boundaries. The Marin ordinance, "Protection of Tidal Waterways," Marin County Code, Ch. 22.77, requires a permit for any

dredging below an elevation of 7.5 feet above Mean Lower Low Water (MLLW). Environmental considerations are part of the permit process. Alameda's ordinance, intended to prevent improperly engineered fills, requires a permit from the City Council for any dredging or spoils disposal.

B. Land Use Regulation -- State

1. State Lands Commission

Under Section 6301 of the Public Resources Code, the State Lands Commission is trustee for all lands owned by the State or in which the State has a reserved interest. The State's holdings and interests in tidal and submerged lands are important because considerable dredging takes place on State lands.

State Lands Commission approval is required for any dredging or disposal on State lands. Permits are issued for simple dredging. A more formal lease is required if royalties may accrue to the State from the dredging and sale of mineral deposits.

2. San Francisco Bay Conservation and Development Commission

Under the McAteer-Petris Act, Sections 66601 et seq. of the Government Code, the San Francisco Bay Conservation and Development Commission has jurisdiction over the water areas of San Francisco Bay, a 100-foot-wide strip of shoreline, and certain other areas. It also issues administrative regulations, 14 Cal. Adm. C. Sec. 10110, et seq. Under the McAteer-Petris Act, the regulations, and the San Francisco Bay Plan, the San Francisco Bay Conservation and Development Commission permits are required to place fill, extract materials (including dredging), or to make any substantial change in the use of any water, land, or structure within the geographical jurisdiction of the Commission.

3. California Coastal Zone Conservation Commission

Under Sections 27000-27302 of the California Public Resources Code, the Commissions (Central and Regional) exercise jurisdiction over dredging or

disposal of dredged spoils within the "permit area" of the "coastal zone," including all areas seaward of the limit of the State's jurisdiction and 1,000 yards inland from the mean high tide line.

A permit must be obtained from the appropriate Regional Coastal Commission whenever dredging or disposal operations are to be conducted within the Commission's jurisdiction. Section 27405(b) of the Public Resources Code, however, specifically exempts maintenance dredging of existing navigation channels and the transportation of dredged materials to disposal areas outside the Commission jurisdiction if done pursuant to an Army Corps of Engineers permit.

4. Tahoe Regional Planning Agency

Under the Tahoe Regional Planning Compact, an interstate compact adopted by the States of California, Cal. Gov. C. Sec. 66800, et seq., and Nevada, Nev. Rev. Stats. 227.190, et seq., and approved by Congress (Pub. L. 91-148; 83 Stats. 360 (1969)), the Tahoe Regional Planning Agency has jurisdiction over use of land and water areas in the Tahoe Basin. It is empowered to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls, and to perform other essential functions. This plan is known as the Tahoe Regional Plan. The Tahoe Regional Planning Agency is also empowered to adopt all necessary ordinances, rules, regulations, and policies to effectuate the plan. The Shoreline Ordinance (Ordinance No. 6) requires that a permit be approved by the agency before any dredging or filling takes place within the shoreline or water.

5. California Tahoe Regional Planning Agency

Under Section 67000, et seq., of the California Government Code, the California Tahoe Regional Planning Agency has jurisdiction over use of land and water areas lying within the State of California in the Tahoe Basin. The California Tahoe Regional Planning Agency's Regional Plan includes the goals and policies of

the agency. A Land Use Ordinance describes allowable land uses and the type of projects which require approval of the agency. The California Tahoe Regional Planning Agency has authority to require approval of all projects, including dredging, that are considered substantial.

6. State Reclamation Board (Board) and Reclamation Districts

Under Section 8710 of the California Water Code, activities—including dredging—that might alter or affect any levee, canal, or embankment in or near the Sacramento or San Joaquin Rivers or their tributaries and overflow basins must first be approved by the Board. The basis for the limited geographical jurisdiction of the Board is apparently historical, being the product of particular needs at the turn of the century, including problems arising from placer gold mining.

By regulation, whenever the location of these activities also happens to occur within the jurisdiction of a levee maintenance, irrigation or reclamation district, a prior approval must be obtained from the governing board of that district before the Board approval will be given, 23 Cal. Adm. C. Sec. 18. Projects undertaken by districts themselves which are within the jurisdiction of the Board also require Board permits.

C. Land Use Regulations — Federal

1. Coastal Zone Management Act of 1972

If either the California Coastal Zone Conservation Commission plan for management of the coast or the Bay Conservation and Development Commission Bay Plan is approved by the Secretary of Commerce under the Coastal Zone Management Act of 1972, a project certification for dredging within the State's coastal waters will be required. The Act provides Federal funding for initial development and permanent administration of Coastal Zone Management plans meeting Federally set standards.

Under Section 307 of the Act, certification of compliance with State Coastal Management plans is required before any Federal permit may be issued.

for activities affecting land or water uses within a State's coastal zone.

Even Federal agencies must conduct their activities in a manner that is consistent with the plan to the maximum extent practicable.

2. Navigation Regulations

The earliest basis for regulation of dredging is the Commerce clause of the U. S. Constitution, which gives Congress plenary power to regulate interstate commerce. Under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, Congress delegated authority to the Corps of Engineers over dredging, filling, and other navigational concerns in all navigable waters of the United States, including San Francisco Bay. The phrase "navigable waters" under the 1899 law, has been interpreted by the courts so that the Corps now considers waters navigable if they are, have been in the past, or may be in the future, susceptible for use for purpose of interstate or foreign commerce. Once a body of water is deemed navigable, jurisdiction extends laterally over the entire surface of the body of water, regardless of depth. In the Bay Area, the San Francisco District of the Corps of Engineers has asserted jurisdiction over all tidal areas below the plane of Mean Higher High Water and all unfilled areas behind dikes below Mean Higher High Water.

D. Water Quality Regulation

The impact of dredging and spoils disposal on water quality is among the most important concerns of State and Federal regulations governing dredging.

1. Porter-Cologne Water Quality Control Act

Under the California Water Code, primarily those provisions known as the Porter-Cologne Water Quality Control Act, Cal. Water C. Sec. 13000, et seq., enacted in 1967, the State established the State Water Resources Control Board and nine Regional Water Quality Control Boards. The geographical jurisdiction of the nine Regional Boards covers the entire State, including all

coastal waters. Any person proposing to discharge materials that could affect the quality of State waters is required to file an application for approval by the appropriate Regional Board. The State Board supervises the Regional Boards and hears appeals on their decisions.

As will be subsequently discussed, the State program has also been approved by the Environmental Protection Agency under Section 402 of the Federal Water Pollution Control Act. The Regional Water Quality Control Board's provide the necessary information on water quality impacts of projects to the State Water Resources Control Board, which then certifies to the Corps under Section 401 of the Federal Water Pollution Control Act that all standards have been met.

2. Federal Water Pollution Control Act of 1972

Most existing Federal legislation relating to water quality dates from the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1251, et seq., which gave the major Federal responsibility for water quality to the Environmental Protection Agency, but also provided for delegation of major regulatory responsibilities to the states.

Section 401 of the Federal Water Pollution Control Act requires any applicant for a Federal permit to discharge into navigable waters to obtain certification from the State that the activity will comply with applicable provisions of the Act. If this is not done with a reasonable period of time (which shall not exceed one year), the certification requirement is waived.

Under Section 402 of the Federal Water Pollution Control Act, any State with an Environmental Protection Agency-approved program to control disposal into "navigable waters" becomes the permit-granting agency under the Federal Act. The Environmental Protection Agency Administrator retains the authority to object to permit approvals on a case-by-case basis only. California has an approved program administered by the Regional Water Quality Control Board and the State Water Resources Control Board under the Porter-Cologne Act, Cal. Water C. Sec. 13000, et seq.

Section 404 of the Federal Water Pollution Control Act gives the Corps of Engineers permit authority over the disposal of dredge and fill material into "navigable waters" at specified disposal sites using guidelines developed by Environmental Protection Agency. Until recently, the Corps interpreted "navigable waters" under the Federal Water Pollution Control Act to be the same as "navigable waters" under the Rivers and Harbors Act of 1899, which had been the basis for Corps permit regulations for 75 years. However, the Federal District Court in the District of Columbia recently held that Congress meant the term "navigable waters" in the Federal Water Pollution Control Act to include "the waters of the United States including the territorial seas," Natural Resources Defense Council v. Callaway, 7 E.R.C. 1784, (D.C.D.C. March 27, 1975), a much broader interpretation than that previously used. "Navigable waters" now includes virtually all waters of the United States, whether presently navigable or not, and whether natural or artificial.

On July 25, 1975, in response to the Callaway opinion, the Corps published "interim final" regulations for the disposal of dredge and fill materials, 40 Fed. Reg. 31321. These regulations significantly expand Corps jurisdiction over that previously exercised in most of the United States. Although they do not appear to affect Corps permitting activities within San Francisco Bay, the new regulations, which will be implemented in stages over a two-year period, extend Corps jurisdiction to all coastal waters, inland navigable waters and their tributaries, interstate waters, intrastate waters involved in interstate recreational, agricultural, or commercial production activities, and all coastal and inland wetlands.

Section 404 of the Federal Water Pollution Control Act also requires the Environmental Protection Agency to develop guidelines for the disposal of dredge spoils. These tentative guidelines, also published as "interim final" regulations in the Federal Register on September 5, 1975, 40 Fed. Reg. 41292, leave a great many central questions unanswered.

For example, the proposed regulations indicate that standards to be applied are those "applicable by law," but there is no indication as to whether these

laws are to be state or federally established, or which agencies may be responsible for administering them. In the past the guidelines most widely used by agencies concerned with dredging regulation were those established in-house by the San Francisco office (Region IX) of the Environmental Protection Agency.

The tentative regulations leave the Corps' district engineers with apparently unlimited discretion to determine when tests to evaluate physical, chemical, or biological criteria are to be used. Policies on spoils disposal sites are stated only in general terms. Without specific guidance from the Environmental Protection Agency, agencies are uncertain of what pollution criteria should be applied in evaluating proposals for aquatic disposal.

3. Marine Protection, Research and Sanctuaries Act of 1972

Passage of the Federal Water Pollution Control Act in 1972, governing coastal and inland waters, was accompanied by passage of the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401, et seq., known also as the "Ocean Dumping Act." Under this legislation, the Environmental Protection Agency was given the power to regulate the dumping of material, including dredged material, into ocean waters through a process similar to that specified in Section 404 of the Federal Water Pollution Control Act. The Corps now issues permits to transport dredged material to specified sites in the ocean under Environmental Protection Agency guidelines and subject to Environmental Protection Agency veto.

E. Marine and Terrestrial Animal Life Regulation

1. California Department of Fish and Game

Acting under authority of the California Constitution, Article IV, Section 20, and under the Fish and Game Code, the California Department of Fish and Game has primary responsibility for protection of the fish and wildlife resources of the State of California. Section 5650(f) makes it "unlawful" to "...permit to pass into...the waters of this State...any substance or material deleterious to fish, plant life, or bird life." Dredging projects that may affect fish and wildlife resources are reviewed by the agency.

Under Fish and Game Code Section 5652, permits from the Department are required for suction dredging in rivers, lakes, and streams. This section has not been applied within Bay Conservation and Development Commission jurisdiction or other coastal areas but is applied in inland waters, principally Sierra streams where gold mining is undertaken.

Department dredging approval is also required under the "streambed alteration" provisions of the code, Sections 1600, et seq. These sections apply to any "river, stream, or lake designated by the Department," and apply within the Bay Conservation and Development Commission's jurisdiction to some rivers and creeks.

The Department serves primarily in a commenting role for dredging projects in the Bay Area. The Department comments on all applications for Bay Conservation and Development Commission, State Lands Commission, and Regional Water Quality Control Board permits, on all Corps permits under the Federal Fish and Wildlife Coordination Act, and on all related environmental documents prepared under the National Environmental Policy Act of 1969 and the California Environmental Quality Act of 1970.

These authorizations ensure at least four opportunities to comment on every dredging project undertaken in the San Francisco Bay area. The regulatory functions of the Department of Fish and Game vary with the project location. In San Francisco Bay and other coastal waters, only commenting authority exists. In rivers, lakes, and streams, other provisions of the code apply and permitting authority then exists.

2. Federal Fish and Wildlife Coordination Act

The Federal Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq., requires the Corps to consult with the U.S. Fish and Wildlife Service and the head of the appropriate state agency concerned with wildlife resources before issuing a permit to dredge or fill. Pursuant to the Act, the Secretary

of the Army and the Secretary of the Interior have written a Memorandum of Understanding 40 Fed. Reg. 17023, pledging mutual cooperation and binding the Corps to consider fish and wildlife conservation, pollution, aesthetics, ecology, and the general public interest, as well as navigation, in acting on permits.

This agreement has provided substantial environmental information for the Corps, but applicants and regulatory personnel claim that it has also given fish and wildlife agencies a de facto veto over projects. A provision of the agreement requires a decision at the secretarial level on any project to which an Interior Department agency (in particular, the U.S. Fish and Wildlife Service) objects. Therefore, an applicant for a Corps permit must alter a project to meet all such objections or be prepared to wait until the dispute is resolved in Washington, which can take as long as a year or more.

The National Marine Fisheries Service of the Department of Commerce, which is concerned with the "marine, estuarine, and anadromous resources" of the nation, has played a regulation role similar to that of the Fish and Wildlife Service. In 1970, National Marine Fisheries Service was transferred from the Department of Interior to the Commerce Department, and it no longer falls within the provisions of the Coordination Act or the Corps-Interior memorandum of understanding. Legislation is currently pending in Congress to restore official authority to National Marine Fisheries Service.

F. Environmental Impact Requirements

Both Federal and State laws require regulatory agencies to assess the environmental impact of proposed dredging projects. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq., requires the preparation of an Environmental Impact Statement when proposed legislation or other Federal actions may significantly affect the human environment. The California Environmental Quality Act of 1970, Public Resources Code, Sections 21000 et seq., established a similar procedure, requiring State agencies to issue one of three evaluations of proposed projects:

(1) categorical exemption for a project meeting criteria set forth in California Environmental Quality Act guidelines; (2) a negative declaration stating that the project will not likely have significant environmental effects; or (3) an Environmental Impact Report for non-exempt actions potentially having a significant environmental effect. Although there are certain differences between the contents of an Environmental Impact Statement and an Environmental Impact Report, current statutory requirements and guidelines for their preparation make the two documents virtually interchangeable.

California Environmental Quality Act guidelines require that the Environmental Impact Report be prepared by the "lead agency," that is, "the public agency which has the principal responsibility for preparing environmental documents and for carrying out a project which may have a significant effect on the environment." This agency determines which evaluation will be made. If the project involves more than one agency, State Environmental Impact Report guidelines explain how to determine which agency is considered "lead." If a jurisdictional dispute arises between agencies, the Office of Planning and Research makes a designation. Thus far, no such dispute has occurred.

For dredging projects, full environmental evaluation is usually undertaken only when disposal in wetlands might occur. The Bay Conservation and Development Commission and the Department of Fish and Game have determined that maintenance dredging and small new dredging projects are generally categorically exempt under California Environmental Quality Act. Exempt projects avoid all California Environmental Quality Act requirements, including lead agency determination and the cost and time of preparing, circulating, and acting on environmental documents. Certain State agencies, principally Regional Water Quality Control Board's, are able to avoid preparing Environmental Impact Reports because California Environmental Quality Act guidelines also exempt the entire reviewing procedures of agencies authorized to protect natural resources and/or the environment. The State Attorney General's Office has questioned the validity of this exemption. Senate Bill 707 (Nejedly), recently passed by the Legislature and signed by the Governor, allows

qualifying agencies to avoid preparing Environmental Impact Reports because their normal review procedures are equivalent to California Environmental Quality Act requirements.

The bill has just become effective but its benefits are as yet unknown. When an exempt agency has to act as a lead agency, it must still prepare an environmental document and go through a circulation process that may prove comparable to that of an Environmental Impact Report. Some State agencies, such as the Bay Conservation and Development Commission, act as a lead agency so infrequently that the time-consuming California Environmental Quality Act processes are not a great problem for them. In addition, SB 707 applies only to State agencies. According to a just released study by the California Assembly Local Government Committee, less than 10 percent of all Environmental Impact Reports are prepared by State agencies; the remainder are prepared by cities and counties. Finally, agencies certified under SB 707 will have the additional requirement of mandating all feasible mitigation of environmentally harmful projects, a requirement that the State courts have suggested may already exist under California Environmental Quality Act. See Friends of Mammoth v. Mono County, 8 Cal. 3d 247 (1972) and Berger v. Mendocino, 45 Cal. App 3d 322 (1975).

For applicants, the major problem posed by environmental impact requirements is the amount of time and money involved in preparing and circulating environmental documents, including negative declarations. Environmental Impact Reports must generally be circulated among the various public agencies concerned for 45 days (a period that can be lengthened or shortened as circumstances require) and negative declarations for 30 days, usually with no variation allowed. The review process itself, however, is beneficial and probably indispensable for projects with a significant impact. A broad examination of environmental considerations, one that goes beyond immediate economic concerns, is necessary for the full evaluation of a project, and any well-designed, properly proposed project will undoubtedly survive environmental review.

Although the environmental impacts of individual dredging projects are probably slight, their eventual, combined effect may be more substantial than is currently recognized. Environmental evaluation of dredging, therefore, might best be done on a cumulative basis, taking into account all dredging within a given area during a given time period and the total impact of projects requiring maintenance dredging. This approach is legally acceptable under both the National Environmental Policy Act and the California Environmental Quality Act. The San Francisco District of the Corps is currently completing a composite Environmental Impact Statement to evaluate the combined effects of all Federal dredging projects in the San Francisco Bay system. A recent Federal court decision concerning dredging indicated that failure to evaluate the cumulative environmental impact of related types of projects may result in violation of National Environmental Policy Act, Natural Resources Defense Council v. Callaway, No. 75-7048 (September 9, 1975). The California Environmental Quality Act requires the preparation of a single Environmental Impact Report to cover long-term impacts of a single project, but it allows the submission of an Environmental Impact Report evaluating the combined impact of similar independent projects.

APPENDIX D
AGENCY PROCEDURES

APPENDIX D AGENCY PROCEDURES

The preceding appendix summarized the legislative bases for the regulation of dredging. This appendix describes the ways in which the various regulatory agencies perform their functions. Some knowledge of these functions is necessary to understanding the problems of the regulatory process and evaluating of our recommendations.

Figures 4 through 7 show the jurisdictional boundaries for the agencies that regulate dredging in California. They serve both as a reference for the discussion in this appendix and as an illustration of the geographical complexity of the existing regulatory scheme. Each agency was established independently, and its geographical jurisdiction is based either on the location of the resources it regulates, e.g., BCDC and RWQCB, or administrative convenience, e.g., the Department of Fish and Game. The BCDC is the sole agency that operates only in the Bay Area. Figure 2, included in the Introduction shows the jurisdictional boundaries for the agencies that regulate dredging in the Bay Area.

Interagency Relations

Many of the laws and procedures on dredging require a substantial amount of formal interagency activity, and more can be expected as more legislation goes on the books. At the same time, informal interagency activity plays an important role in the regulatory process.

For example, in many cases agencies will informally choose not to exercise their legal jurisdiction over certain aspects of a project because another agency has more direct responsibility or greater expertise. A

number of agencies rely on the BCDC Bay Plan and the Regional Water Quality Control Board's (RWQCB) Basin Plan to guide them in certain kinds of decisions. Many agencies also look to local general plans for guidance on the acceptability of projects. The State Lands Commission (SLC), although primarily responsible for State-owned property, is also concerned with the environmental quality of the waters that flow over its holdings. Lacking the in-house expertise to make the evaluations independently, however, it has instead looked to the agencies with primary responsibility in those areas.

To minimize conflicts between applicants and agencies and to ensure that applicants fulfill all legal requirements, several agencies use conditional permits. An applicant satisfying all the requirements of a permitting agency may be given a permit contingent on obtaining the approval of one or more of the other agencies. The SLC, for example, can require that the RWQCB and the Department of Fish and Game both be satisfied as a condition of obtaining an SLC dredging permit. Although the permit itself is a formal document, the circumstances of its issuance will vary from case to case.

Within the dredging regulatory system, many problems that might arise because of conflicting laws and procedures can be avoided, or at least reduced, if working cooperation among the different agencies is good. Consequently, the personnel of all State and Federal agencies frequently attend meetings, discuss projects and policies, and generally try to maintain a reasonable understanding of one another's operations. One example of an informal, inter-agency working group is the Dredge Advisory Group. Organized by the District Engineer of the San Francisco Corps District, the group holds monthly meetings attended by members representing the government and the dredging and shipping industries in the Bay Area.

Local Government

Most dredging projects do not require formal local approval, but when local approval is needed procedures vary considerably. Therefore, only a general description of the local approval process is possible.

Where local approval of a dredging project is required, the local agency is usually the lead agency for the purposes of the CEQA and must supervise the preparation of the required environmental documents. Even if formal local approval is not required, applicants for BCDC permits must obtain a "local report," certifying that local approval either has been obtained or is unnecessary.

Applications for local approval of dredging projects are usually submitted to a planning agency, such as the city planning commission, or to the engineering department. This agency will determine if the project conforms to local requirements, including the general plan, zoning ordinances, building codes, environmental regulations, and other relevant regulations. Local government approval may require action by the City Council or the Board of Supervisors, although projects conforming to existing standards can often be processed administratively. There are no uniform time constraints for either the processing of applications or the duration of permits.

State Resources Agency

The State Resources Agency is involved in the dredging regulatory process in two major ways. First, the Secretary for Resources at the request of the Office of Planning and Research (OPR) issues statewide guidelines for implementing the California Environmental Quality Act (CEQA), 14 Cal. Adm. C. Secs. 15000, et seq. These aid the lead agencies in determining whether a proposed project is categorically exempt from detailed environmental assessment. Categorical exemptions can be made relatively quickly. If a project

is not categorically exempt, then the lead agency must determine whether or not the project is likely to have a significant effect on the environment. A determination that the project is not likely to have significant effect requires the preparation, circulation, and certification of a "negative declaration," which generally takes 30 days. If the project will likely have a significant effect on the environment (not the case with most dredging projects), preparation of an environmental impact report is required which can take from 6 months to a year.

The Resources Agency also coordinates two types of project comments. First, State agencies forward comments on draft environmental documents to the Resources Agency where they are collected and transmitted to the lead agency. Secondly, the Governor has designated the Resources Agency to coordinate official State comments on Federal projects. The Agency coordinates comments on Corps Public Notices and Environmental Impact Statements. Upon receipt from the Corps, the Public Notice is forwarded by the Agency to appropriate State agencies. The comments are then collected, and an effort made to ensure consistent State responses. In addition to resolving possible conflicts between departments, the Agency helps to determine what the State policy will be. The Agency directs the policy orientation of its departments, and on major projects state the Administration's policy.

San Francisco Bay Conservation and Development Commission (BCDC)

BCDC regulates dredging, filling, and land use in the Bay and within 100 feet of the shoreline. On receipt, BCDC evaluates an application for a dredging project for completeness and determines whether the application must be heard by the Commission or whether it can be processed administratively.

Under BCDC regulations, applications for new dredging of less than 100,000 cubic yards in a 12-month period and applications for all maintenance dredging can be processed administratively. All other dredging projects require the preparation of a staff report to the Commission, a Commission hearing, the preparation of a staff recommendation, and a Commission vote on the permit application. In both cases, however, the applicant is required to submit nearly identical information, and the staff performs nearly identical evaluations.

Prior to acting on any dredging project, BCDC is required by the McAteer-Petris Act to request a RWQCB report and to consider any local report on the project from any affected local jurisdiction. Application copies must also be sent to the Corps, State Fish and Game, and the SLC for comment.

If the proposed project is consistent with land uses designated in the McAteer-Petris Act and the San Francisco Bay Plan and if it meets disposal criteria set by the RWQCB and the Environmental Protection Agency (EPA), BCDC's primary concern is to ensure that disposal does not occur in marshes and other wetlands. Disposal in wetlands is prohibited by the McAteer-Petris Act unless the Commission grants a permit. Bay Plan dredging policies recommend disposal of spoils on dry land, in approved fill projects, in the ocean, or as a last alternative, at designated Bay disposal sites where spoiling will have the least impact on the Bay.

If BCDC is the lead agency under CEQA, the preparation of an environmental document will depend on the project. Under Commission regulations, most dredging projects qualifying for administrative permits are categorically exempt, while most projects requiring Commission consideration are not.

Administrative permits are generally issued in from 2 to 6 weeks,

depending on Commission meetings and staff work loads. Major permits require considerably more time, including notice at least 28 days prior to the public hearing, the preparation of necessary staff reports and recommendations, and a minimum 2-week interval between the public hearing and Commission voting. The processing of applications is described in detail in the Commission's regulations, 14 Cal. Adm. C. Secs. 10305, et. seq. California Coastal Zone Conservation Commission

The California Coastal Zone Conservation Commission and its six Regional Commissions probably has the most uniform, though informal, procedures with respect to dredging permits of any of the multi-regional State agencies. Figure 4 shows the jurisdictional boundaries for the Regional Commission.

Dredging for non-exempt projects or disposal by any applicant other than the agencies of the Federal government or their contractors requires a Coastal Commission permit if done within Coastal Commission jurisdiction. The Regional Commissions are usually informed of such projects in two ways. Either an applicant directly contacts the Commission specifying the intended project, or the applicant applies for a Corps of Engineers permit for the activity and the Commission receives notice through the Corps Public Notice. The Corps has informally agreed not to issue any such permits until Coastal Commission permits have been obtained.

Applications for dredging or disposal of spoils are treated by the Regional Coastal Commissions the same as any other permit application. Applications for dredging projects valued at less than \$10,000 are usually processed administratively. A permit granted by staff is not effective until it has been "ratified" at a Commission meeting. The Executive Director reports the pending action at the first meeting following the

AGENCY JURISDICTION

Regional Coastal Commissions

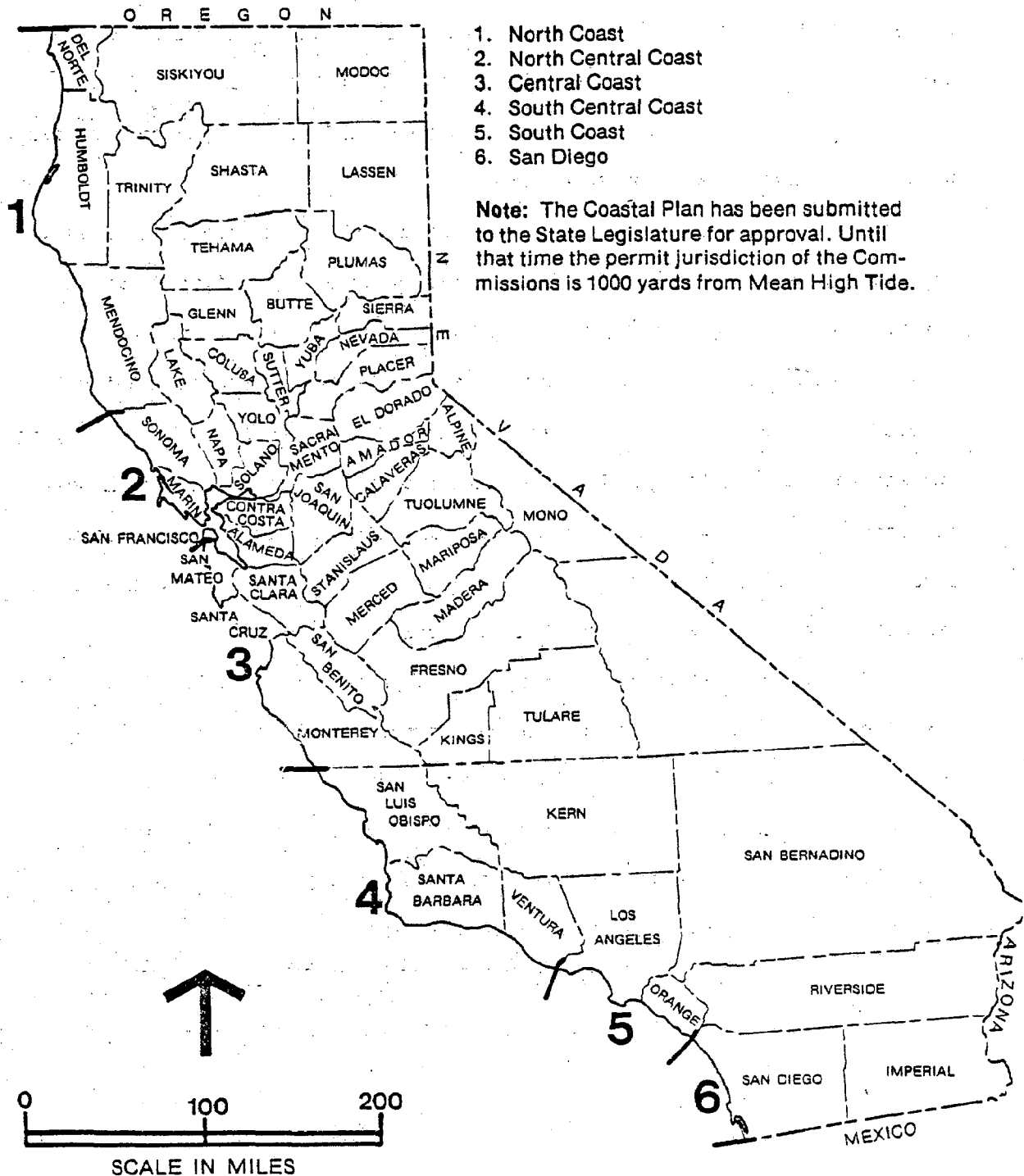


Figure 4

issuance of the permit. It then becomes effective unless two commissioners object and ask that it be scheduled for a public hearing.

Upon receipt of an application requiring Commission approval, a public notice is prepared describing the nature of the proposed project and giving the time and place of the public hearing. The hearing must occur between 21 and 90 days after the application is filed. The Regional Commissions must then approve or deny a permit within 60 days after the public hearing.

Permits can be granted for several years and conditioned on compliance with the requirements of other agencies.

Regional Commission decisions are final unless an appeal is filed with the State Coastal Commission within 10 working days. The State Commission may affirm, reverse, or modify a Regional Commission's decision, but its failure to act on the appeal within 60 days of filing, makes the Regional Commission's decision final. Under Section 27401 of the Act, where dredging and alteration of water quality are concerned, the State and Regional Commissions require a two-thirds vote of a Commission's membership to grant permits. Judicial review must be sought within 60 days after a State or Regional Commission decision has become final.

The general statements of purpose and policy in the California Coastal Zone Conservation Act itself have served as the guidelines for Commission permit decisions. The Coastal Plan elements adopted by the Commission, however, contain policy statements directed specifically at dredging operations in Coastal waters. These policies specify the criteria for dredging approval, including scheduling, necessary sediment analyses, and disposal site selection factors. Within the next year the California Legislature must determine the future of this plan and its policies.

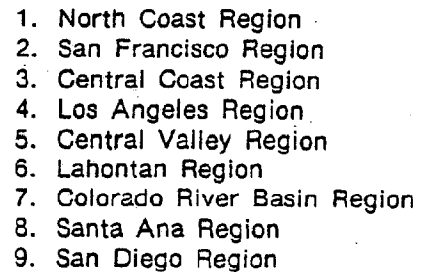
Tahoe Regional Planning Agency (TRPA)

TRPA regulates dredging and filling within the Tahoe Basin. All applications must first be acted on by the appropriate local government known as the "permit issuing agency." All projects with a value greater than \$500 must be approved by a "dual majority." A dual majority means that a majority of the representatives of one State delegation must agree with a majority of the other. Courts have held that if a dual majority is not obtained the agency has not acted. This provision has resulted in automatic approval of projects under a section of the law which states that ".....(t)he agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does not take final action within 60 days, the proposal shall be deemed approved." (P.L. 91-148, 83 Stat. 360, Art. VI, Sec. k). All applications must be acted on by the Board at the monthly meeting. The only notice requirement is the mailing of a meeting agenda 5 days before the meeting.

California Tahoe Regional Planning Agency (CTRPA)

CTRPA regulates dredging and filling within the California portion of the Tahoe Basin. The CTRPA Regional Plan provides policy guidance. Matters to be reviewed, application procedures, and decision standards are described in the agency's Land Use Ordinance. This Ordinance requires the agency to act subsequent to the local agency, but prior to TRPA. Agency staff has 15 days to determine if certain local government permits (which generally do not require a CTRPA permit) should have a fuller review by the agency. All matters requiring an agency permit are acted on by the Governing Board. Although not mandated by law, the agency generally acts within 60 days after an application containing adequate information is filed.

Regional Water Quality Control Boards & Reclamation Board



Reclamation Board approves or disapproves any construction, improvement, or alteration along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries, or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom. Area generally corresponds to Central Valley Region.

Figure 5

State Lands Commission (SLC)

The jurisdiction of the SLC is based on the property interests of the State. In most cases the extent of State holdings is clear, but in certain areas, particularly tidelands, both boundary lines and the extent of the State's interest are being litigated.

Dredging approvals by the SLC include "leases," "land use leases," and "permits." Leases are used exclusively for approval of mineral extraction for commercial purposes, i.e., mining. A land use lease constitutes approval of all phases of a project including its operations, as well as the use of the land or minerals. In these cases, since the total nature of the project is known, any necessary maintenance dredging is approved in the original authorization for the life of the lease and no subsequent approvals are required. A dredging permit is given for individual construction projects. Bids are not required. Dredge and disposal sites are negotiated to accommodate the needs of the particular project.

Royalties are demanded by the SLC for any spoils deposited on private upland areas or for minerals wasted by transportation to a disposal site because in either case the deposits are effectively lost to the State. A survey of mineral deposits and a schedule of royalty fees is maintained in the SLC's Long Beach office where project applications are reviewed to see if they concern land interests within the SLC's control. The initial review takes one to three weeks, followed by up to 90 days (plus liberal extensions) to allow the applicant to reply to a notification asserting SLC jurisdiction. Practice has allowed "grace periods" for as much as six months. In recent months, the SLC has also undertaken enforcement of the public trust in State lands and begun to develop a permit program for ensuring compliance

with trust doctrines.^{1/} Acting on SLC's behalf, the BCDC enforces the public trust within its area of jurisdiction.

Within two weeks of submission of a complete application for a dredging permit, a "calendar item" is prepared by the State Lands Division, the administrative arm of the SLC, and sent to the Commission requesting issuance. The Commission meets only once a month, and it may be as long as four weeks before the Commission considers the application. Within one week of Commission approval, dredging permits are issued.

The processing period is lengthened in two ways if a lease is required. First, negotiations over royalties can add two to three months to processing time before the SLC even acts. Second, with competitive bidding, an additional nine weeks may be needed after Commission approval of the staff recommendation. This includes three weeks for advertisement, followed by the submission of bids and a second Commission meeting to accept a bid and approve the lease.

By statute, the SLC must take final action on an application within 180 days, Cal. Pub. Res. C. Sec. 6502. Longer periods are allowed if environmental documents must be considered.

The SLC has broad powers to set the terms and conditions of the permit or lease "as will be for the best interest of (the) State." There is, however, no land use plan to guide decision-making. No formal application procedure is specified by the State Lands Division, although applicants are provided with a list of requirements applicable to their individual

1. Under three provisions of the California Constitution, the people of this State have asserted their right to maintain the common law public trust for navigation, access, and fishing on, to, and in specified waters of this State. (Cal. Const. Art. I, Sec. 25, Art. XV, Secs. 2 and 3). The trust guarantees that these rights to use the State's waters will exist in perpetuity and cannot be ceded by the State. Even where all other vestiges of title have been transferred, the public trust interests are automatically reserved to the public.

requests for dredging authorization. Very few applications are formally rejected because the requirements are either met or the applicant withdraws his application.

SLC administrative policy (which can be waived on an individual basis) requires the formal approval of the State Department of Fish and Game and the RWQCB before processing of an application can begin. The SLC will grant its permits and leases on the condition that certain other agencies approve, i.e., the applicant need not secure their approval before the Commission acts, but must obtain their approval to validate the lease or permit. BCDC and the Corps are two such agencies. At the present time, the Commission itself must act on all applications submitted to it, but it is considering establishing criteria to allow administrative processing of certain applications.

State Lands Division staff have indicated that the Commission most commonly serves as the lead agency under CEQA for dredging projects when it must act on mineral extraction leases or land use leases. The SLC is generally not the lead agency for a dredging permit application. Where it is not the lead agency, the Commission acts as a "responsible agency" under CEQA and will not approve applications until it has received the necessary environmental documents.

State Reclamation Board

The State Reclamation Board handles approximately 1,000 applications for permits (known as "Board Orders") per year. Figure 5 shows the Board's area of jurisdiction. The application form itself is a brief document, requiring only the name, address, and phone number of the applicant and a short description of the desired activity. Information was not available as to what percentage of those applications were for dredging activities. The types of dredging projects that would be likely to require a Board permit

include levee and flood control projects, and commercial activities including mining and extraction of fill material. Board staff indicated that very small projects involving only minor material alterations would generally not pass through the regulatory process. In addition, very simple maintenance and repair activities would not require a permit. The jurisdiction of the Board is traditionally not exercised along the Sacramento and San Joaquin river systems west of Collinsville, and there are no permitting activities within the San Francisco Bay system.

It was also indicated that the Board maintains informal relations with the other agencies that exercise permitting authority over the same activities, but that there is no coordination of the processing of applications.

State Water Resources Control Board (SWRCB)
Regional Water Quality Control Board (RWQCB)

The RWQCB's are the most important State agencies concerned with the water quality aspects of dredging projects. Figure 5 shows the jurisdictional boundaries of the Regions. They grant waste discharge requirements (essentially a permit) required by the Porter-Cologne Act. The Regional Boards also recommend to the State Board whether the certification of compliance required by Section 401 of FWPCA should be issued or excused in particular cases, or what the requirements to obtain a certification should be. Certification (or withdrawal of request for certification), a statement that the proposed activity will comply with Federal water quality standards, is required by Section 401 of the FWPCA before the Corps can act.

The State and San Francisco Regional Boards have adopted a Basin Plan for the San Francisco Bay Basin that is the official State water quality control plan for this region and needs only EPA approval to become the official

Federal plan as well. (All other Regional Boards have also adopted "Basin Plans.") Such approval is expected by January 1, 1976. One policy concerns the disposal of dredged spoils:

"It shall be prohibited to discharge ... silt, sand, clay or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses." [Water Quality Control Plan, San Francisco Bay Basin.]

This broad policy statement provides general guidance for the case-by-case evaluation of the water quality effects of each dredging project. More specific policy guidance is established by policy resolutions. Existing policy is contained in San Francisco Board Resolution 72-15, dated November 28, 1972. Though currently undergoing revision, Resolution 72-15 now requires the following:

"No significant variation in turbidity beyond present natural background levels;

"No bottom deposits above natural background levels;

"No toxic or deleterious substances present in concentrations or quantities which will cause deleterious effects on aquatic biota, wildlife or wildfowl or which render any of these unfit for human consumption either at levels created in the receiving waters or as a result of biologic concentrations."

This policy also adopts the same sites in the Bay for disposal that have been designated by the Corps. These sites are areas of relatively deep water with strong currents. The two most heavily used are near Alcatraz Island and in the Carquinez Straits.

Also, under this policy the Executive Officer may waive sediment analysis for projects involving less than 10,000 cubic yards of dredged spoil and specify a disposal site without Regional Board action. In practice, however, sediment analyses are always required by the Environmental Protection Agency regardless of volume, and the Resolution therefore applies only to uncontaminated spoil disposal.

Beyond these policy guides there are no Board regulations to direct decision-making, although the Porter-Cologne Act establishes some broader procedural requirements, including a maximum processing period of 120 days for waste discharge requirements, "Cal. Water C. Sec. 13264(a), after which a discharger can begin disposal at the risk of "requirements" being subsequently imposed.

The San Francisco Regional Board has never assumed the position of lead agency for the purpose of CEQA because of a categorical exemption from the provisions of CEQA known as a Class 8 exemption, 14 Cal. Adm. C. Sec. 15108, which applies to regulatory agencies authorized by State or local ordinance to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process itself provides procedures for environmental protection.

Applicants for dredging approval submit an application called a "Report of Waste Discharge" and, if necessary, a request for certification to the Executive Officer of the Regional Board. Included with this report is an analysis of sediments taken from the dredging site and a proposed disposal plan. If there will be no discharge or return flow into waterways

from the project, generally because of land disposal above mean higher high water no certification is required, and the applicant will be instructed to withdraw his request.

Discharges with contaminated spoils will always necessitate the preparation of waste discharge requirements. Contamination is measured against the in-house guidelines written by the EPA, Region IX. Where spoils are uncontaminated and disposal is in an approved site, no requirements are necessary, and the matter can be waived administratively by the Regional Board Executive Officer.

If State Board certification to the Corps is required, waste discharge requirements are a prerequisite, except in the case of short-term activities where there is a demonstrated need for immediate certification and the Executive Officer believes no significant threat to water quality will result.

When certification is deemed not necessary by the Regional Board Executive Officer, the applicant will be requested to submit a letter withdrawing the request for certification. The members of State and Regional Boards are advised of the administrative determination and can override the decision.

This procedure allows disposal of relatively uncontaminated spoils to be administratively processed without requiring certification. Projects so approved have been very large, sometimes as great as 500,000 cubic yards.

Under the Porter-Cologne and Federal Water Pollution Control Acts, any discharge of a "pollutant" into waters within the Acts' coverage requires certification. Pollutant is defined in the FWPCA to include dredge spoils

irrespective of contamination. For this reason, letters of withdrawal may be permissible only where land disposal will occur. It usually takes about 60 days to determine that certification is not necessary and to process a letter of withdrawal.

When waste discharge requirements are needed, the Regional Board staff drafts the requirements as a "tentative order," including monitoring procedures (to ensure compliance with orders) and circulates this for 30 days prior to the Regional Board meeting at which time the order will be considered. To save time, and on the assumption that the order will be approved, a notice of request for certification is published concurrently by the San Francisco Board because the notice also requires a 30-day review period. The State Board Executive Officer is then able to process the order as soon as it is approved by the Board. About half of the RWQCBs in the State use this concurrent publication procedure.

The preparation of waste discharge requirements often requires considerable time. Although the initial determination of the requirements can be done quickly, the whole process can take up to three months because of the backlog of requests and the negotiations with Regional Board staff over the nature of requirements, such as disposal site selection.

No procedural distinction is made between maintenance and new dredging. Since the Board relies on analysis of sediments, it will only grant permission to dispose of dredge materials that have been analyzed. Therefore recurring maintenance projects certified for more than one year are contingent on annual sediment analysis. New projects are certified for the duration of the project.

The Regional Board is required to conduct a public hearing on waste discharge requirements, but generally accepts the staff recommendation, approves the requirements as a consent item, and requests State Board

certification if there are no adverse comments. Upon receipt of the certification recommendation and supporting documents from the Regional Board, the State Board Executive Officer determines whether certification should be granted, submitting his decision to the Board for its concurrence. If a hearing is requested of the State Board because no hearing was held by the Regional Board, the State Board makes the decision. The recommendations of the Regional Board are usually followed. State Board processing takes approximately 30 days, including 15 days to receive the Regional Board recommendation and 15 days for the State Board to process it.

The State Board can also consider appeals from Regional Board decisions setting waste discharge requirements or decisions declining to do so. On appeal, the State Board can consider any relevant information and has broad authority to overrule the Regional Board, although it seldom does so. There are no time limits for final consideration by the State Board.

Regional Water Quality Control Boards vary widely in their treatment of dredge and disposal projects. Most regions allow small projects, or projects which, in the opinion of the Regional Board, will have no adverse effect on water quality, to bypass the lengthy review afforded larger and more significant projects. California Water Code Section 13269 allows the setting of waste discharge requirements to be conditionally waived by a Regional Board where the waiver is not against the public interest. Such waivers may be terminated by a Board at any time.

Using EPA criteria, the Los Angeles, San Luis Obispo and Colorado River Basin Regional Boards conduct a staff review of project volumes, contamination level, time involved, and disposal site. If the staff finds that no significant adverse environmental effect is likely to occur, waste

discharge requirements and certification may be waived. Projects handled in this manner probably never exceed 5,000 cubic yards. The Los Angeles district of the Corps does not always accept this determination and may require certification.

The San Diego Region classifies projects of less than 5,000 cubic yards as "minor" and exempts them from Regional Board review. For other projects in the San Diego Region designated for ocean disposal beyond the 3-mile limit of State jurisdiction, a staff letter of findings is transmitted to the Corps directing that the discharge is not to exceed EPA contamination standards. In the rare case where disposal within State jurisdiction is allowed, e.g., within San Diego Bay, waste discharge requirements are set and certification procedures are followed. Shoreline disposal is sometimes allowed for beach replenishment purposes where the spoils are clean sand.

The Sacramento Regional Board reviews each request for waste discharge requirements or certification on a case-by-case basis. If, in the Regional Board's judgment, there will be no significant water quality problems, waste discharge and/or certification is waived. Waivers are frequently conditioned on the satisfactory protection of water quality and downstream beneficial uses.

Only one region, Los Angeles, considers dredging permits to be a significant portion of its workload. Most regions estimated that 10% or less of their time was devoted to dredging permits. Los Angeles made a similar estimate of its time expenditure, but indicated that the dredging permit workload was expected to increase.

All regions use State Water Resources Control Board regulations and guidelines as to procedure; none have formulated regional regulations even

though Section 13222 of the Water Code encourages the Board to have their own regulations. Environmental Protection Agency guidelines are the basis for contamination tolerance levels, used in conjunction with the regional basin plans developed by every Board.

Environmental Protection Agency (EPA)

Under the FWPCA, the EPA is responsible for establishing Federal water quality criteria for dredging and reviews projects according to these criteria. EPA interim final regulations for implementing this responsibility were published September 5, 1975, and essentially established general disposal policies, with contamination levels to be evaluated by tests required by the Corps, using yet to be determined standards. On the West Coast these would replace current guidelines for contamination levels that have been established on an in-house basis by Region IX of the EPA.

In the past, EPA has requested more sediment samples and chemical tests than the Regional Board. For example, the San Francisco Regional Board does not often require sediment analysis for projects under 10,000 cubic yards but the EPA does. Generally, agreement was reached by the applicant, EPA staff, and RWQCB staff fairly early in the application process so that the sediment analysis requirements were clearly understood. If an agreement was not reached, applications could be delayed.

Where spoils were found to be contaminated beyond certain levels, EPA would insist on ocean or dry land disposal. Thus, disposal sites would always exist, although heavily contaminated spoils might result in greater costs or other difficulties for the applicant. The effects the new regulations will have on these procedures is thus far uncertain.

In contrast to the Corps regulations which are discussed later in this appendix, the proposed interim final regulations published by the EPA

leave a great many central questions to be answered. No numerical guidelines were set. Instead, the regulations asserted general evaluation policies and the appropriate tests to obtain certain data.

The policies include an evaluation of the need for the project, the availability of alternative disposal sites, and a careful consideration of water quality standards. They set forth objectives of non-disruption to existing physical, chemical or biological balances at the dredge and disposal sites, protection of aquatic animal and plant life, minimization of adverse turbidity levels, and preservation of aesthetic, recreational, and economic values. Particular considerations at disposal sites are to include avoidance of disposal near public water supply intakes, shellfish beds, fish nurseries and spawning areas, avoidance of wetlands except where no alternative site exists and the harm would be minimal, avoidance of excess turbidity or foul odors or water colors in recreational waters, and avoidance of harm to benthic organisms and endangered species.

Tests to evaluate the physical, chemical and biological criteria are specified including the elutriate test for chemical analysis, appropriate bioassays for toxicity, inhibition and bioaccumulation evaluations, and bulk sediment analysis for evaluation of sediment composition at the disposal site.

The use of these tests is generally stated to be within the discretion of the Corps District Engineer. As the regulations state in Section 230.4-1, "In order to avoid unreasonable burdens on applicants in regard to the amounts and types of data to be provided, consideration will be given by the District Engineer to the economic cost of performing the evaluation, the utility of the data to be provided, and the nature and magnitude of any potential environmental effects."

The regulations provide that when the tests are performed they are to be evaluated with respect to standards "applicable by law." There is no indication as to where those standards are or will be or who will set them. Are they to be State, EPA regional or national standards? When will they appear and what is to be done in the meantime?

The regulations question the technical validity of the tests it proposes, seeming to imply that the standards are meaningless. They state that the "state-of-the-art" has not shown numerical data to be effectively related to environmental effects.

State Department of Fish and Game

The State Department of Fish and Game is responsible for the protection of California fish and wildlife resources and reviews dredging applications accordingly. Figure 6 shows the jurisdictional boundaries of its regions. The Department serves primarily in a commenting role for all dredging projects in the Bay Area. It comments on all applications for BCDC permits and, under the Federal Fish and Wildlife Coordination Act, on all Corps permits, and on all related environmental documents prepared under NEPA or CEQA. Each of these represents independent opportunities for comment, and therefore, a bypassed comment opportunity still leaves several possible alternatives.

When the Department receives a Corps public notice (for Coordination Act review), an environmental document, or a request from any other agency for review and comment, the request is forwarded to the Area Biologist in the district where the project site is located. After preparation, the field report is forwarded to the Regional Office, and from there to Sacramento for the Director's approval. It is then transmitted to the requesting agency via State Resources. Some Fish and Game comments, such as to BCDC and the RWQCB are transmitted directly. Field level report preparation has resulted in

AGENCY JURISDICTION

Department of Fish and Game

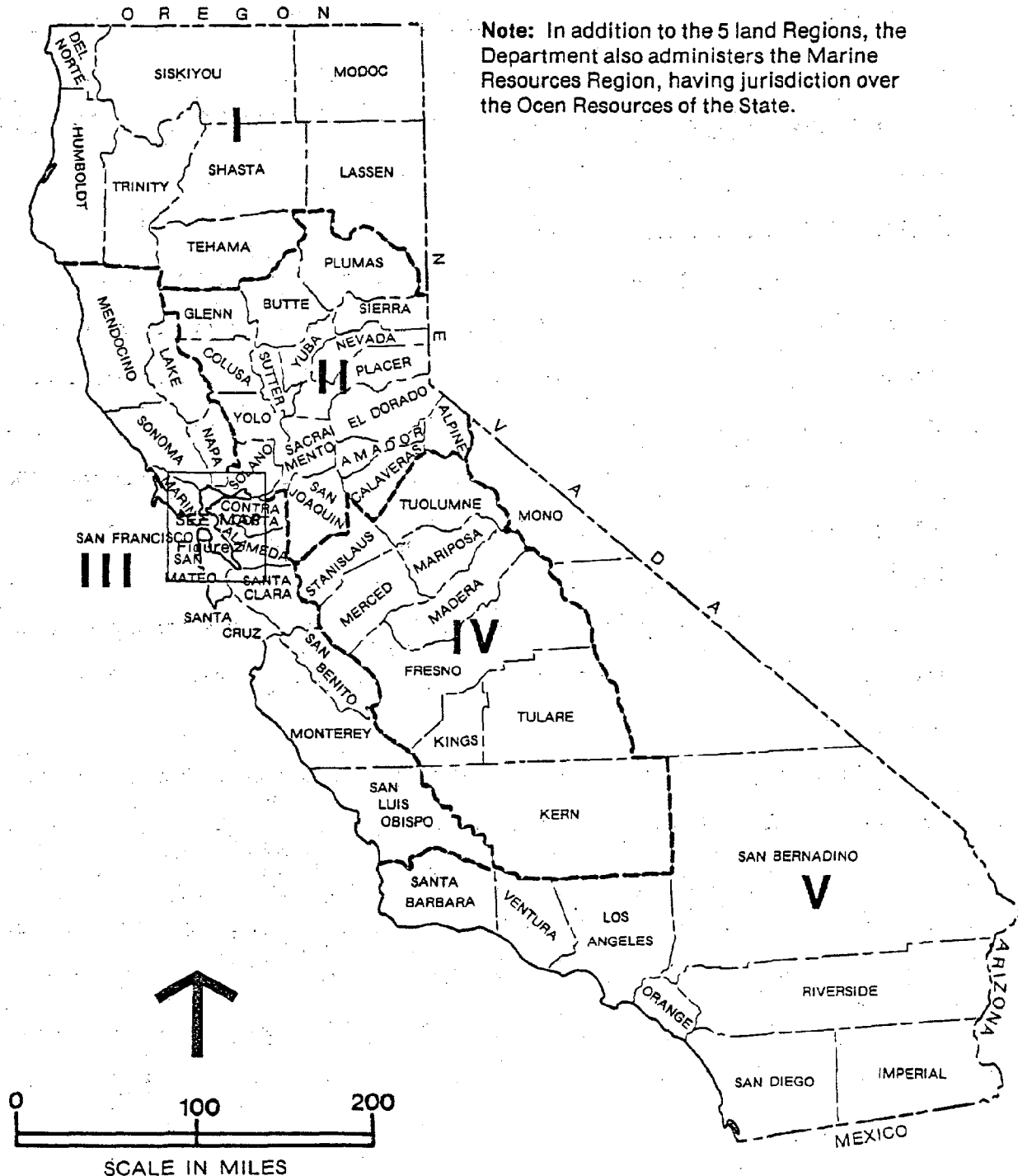


Figure 6

some minor problems with comment consistency because staff members prepare comments without central coordination. Multiple comments can create problems on single projects as well as among similar projects. The additional problem of a lack of an up-to-date plan results in the controlling comments changing with department personnel.

Fish and Game review is directed at fish and wildlife resource protection and the enhancement of wetland areas and mudflats. Spoils contamination is also of concern, making the sediment analysis an important review element. Mitigation efforts are actively sought, including scheduling to avoid disruption of fish runs, use of alternative disposal sites, or the creation or restoration of marsh areas. No time limits exist for review other than those set by other agencies such as through the Corps Public Notice or CEQA.

Under Fish and Game Code Section 5652, permits from the Department are required for suction dredging in rivers, lakes, and streams. This section has not been applied within BCDC jurisdiction or other coastal areas but is applied on inland waters, principally Sierra streams where gold is mined. Particularly in recent years there has been a resurgence of recreational and pecuniary interest in this activity. The Department issues permits without charge when a determination is made that the operation of the vacuum or suction dredge will not be deleterious to fish. Regulations authorize the Department to limit the size, type and use of permitted dredges, the duration of the permit, and the streams, rivers or lakes where operation of a suction or vacuum dredge of a specified size is acceptable.

Two types of permits are available: "standard" and "special". Standard permits of up to one year in duration are available for dredging equipment with intake pipes 12 inches or less in diameter for use in waters

where dredging has been pre-determined to be acceptable at specified times. Standard permits are obtained by completion of a Department application, requiring only the applicant's name, address, phone number, the purpose of the dredging operation, and a certification that the applicant has read the applicable statutes and regulations. No dredging site needs to be specified.

A "special" permit is required for use of vacuum or suction dredging equipment over 12 inches in diameter. Applicants must supply extensive information beyond that required for a "standard" permit, including an exact description of the project site (map required), scheduled time, volumes and types of material to be removed, equipment to be used, and probable effects on water quality and fish and game resources in the area.

The total number of standard permits issued has increased dramatically, with 989 issued in 1973, 2707 in 1974, and 4473 in 1975 as of July. Special permit issuance has grown rapidly also, with 38 issued in 1973, 371 in 1974, and 107 as of July 1, 1975.

Another Department of Fish and Game "permit" procedure applicable to dredging is specified in Sections 1600 through 1602.5 of the California Fish and Game Code. Under these sections, which are unique for a State regulatory agency, public agencies, private organizations, or individuals that propose projects that will divert, obstruct, or change the natural flow or bed of any river, stream, or lake designated by the Department of Fish and Game or will use material from designated streambeds must submit a plan for the project to the Department of Fish and Game.

If the Department believes fish or game resources may be substantially affected by the project, it has 30 days from the date of mailing the "Receipt

of Notification" to submit proposals for modification of the applicant's plans designed to protect these resources. The 30 day period may be extended by mutual agreement. Within 14 days from receipt of the Department proposals (longer by mutual agreement), applicants must decide if they are acceptable or not. If they are unacceptable and no agreement can be reached, a panel of arbitrators must be established within 7 days of the applicant's rejection of the proposals. Arbitration panels consist of a Department representative, a representative of the applicant, and a mutually agreed upon third person, who acts as chairperson. If either party is dissatisfied with the arbitration, it may seek court action under Section 1602.5 of the Code.

Although Federal agencies are exempt from the provisions of Section 1602, a memorandum of understanding between the Department of Fish and Game and some Federal agencies provides for incorporation of waterway protective measures into permits granted by those agencies. Some Federal agencies, such as the Corps of Engineers, notify the Department of stream-bed alteration projects.

Without further legislative action, the arbitration provisions outlined above will cease to be law in 1977, although the requirements for submission of a project plan and the preparation by the Department of recommended modification will continue.

U.S. Fish and Wildlife Service (USFWS)

The U.S. Fish and Wildlife Service of the Department of Interior responds to Corps Public Notice, much as does State Fish and Game. There are no time limits on these responses, and the Corps must wait to receive them. The Sacramento field office of the USFWS reviews Bay Area dredging projects on a case-by-case basis, guided by the Interior Department's Navigable Waters Handbook,

which contains agency policy statements applicable to dredging projects, as well as standards for review, check lists, and form letters. For example, projects affecting the National Wildlife Refuges in South San Francisco Bay and San Pablo Bay are reviewed against the Service's refuge plan.

Generally, the Service does not object to activities at the dredging site, but may object to a project if (a) proposed spoils contaminant levels fail to meet EPA criteria, (b) disposal will affect wetlands, or (c) the work conflicts with its resource protection objectives. Land disposal of spoils is usually acceptable in areas designated or used for ports, marinas, and water-dependent industries, particularly if approved by State, regional, or local planning agencies and fish and wildlife mitigation is considered in the project. To this end, the BCDC Bay Plan often is relied on by the Service for Bay Area projects. Disposal in former tidelands may be acceptable if the disposal site is not recoverable for wetland uses. An on-site inspection by Service personnel will often be made where land disposal is involved.

Generally, the Service responds on the basis of the environmental impact documents and staff knowledge of the project area. This knowledge is often supplemented by conferring with the State Fish and Game Area Biologist. The agency often requires applicants to undertake mitigation measures to reduce the overall impacts of their projects. These requirements are made without reference to firm policy statement or specific plans but are rarely successfully challenged because of the special status the agency occupies under the Fish and Wildlife Coordination Act: it is the only agency whose objections can be overridden only at the Secretary level in Washington, a review process requiring as much as a year to complete. Applicants usually prefer to concede rather than delay approval.

The USFWS recently promulgated regulations to guide their decision-making with respect to projects in navigable waters, 40 Fed. Reg. 55810

(December 1, 1975). The impact of these new regulations is not yet certain.

National Marine Fisheries Service (NMFS)

The NMFS is mandated to protect fisheries resources and also reviews dredging permits by responding to Corps Public Notices. Procedures or criteria for this review, other than the broad policy of trying to identify potential damage to the marine, estuarine, and anadromous resources the Service must protect, have not been established. In the Bay Area, the Service relies on close coordination with U.S. Fish and Wildlife Service and State Fish and Game. The Service does not object to projects unless the resources it is charged with protecting may be adversely affected. The Service relies heavily on environmental impact documents during its case-by-case review, and on the EPA Region IX water quality guidelines to judge whether or not adverse impacts are likely to occur and whether or not comments should be made regarding spoils disposal methods or sites. There are no time limits for comment submission, but unlike the U.S. Fish and Wildlife Service, the Corps need not delay processing pending receipt.

U.S. Army Corps of Engineers (Corps)

The Corps authority over dredging and spoils disposal is based on Federal authority over both navigation and water quality. The regulatory activities of the Corps of Engineers in California are administered by three district offices located in San Francisco, Los Angeles, and Sacramento. Figure 7 shows the jurisdictional boundaries of the districts. While each office operates under the same authorizing legislation and the same formal regulations, there are some differences in the operating procedures of individual districts. For routine projects, the Corps generally issues dredging permits within six and one half months of the date of application. Up

AGENCY JURISDICTION

Corps of Engineers

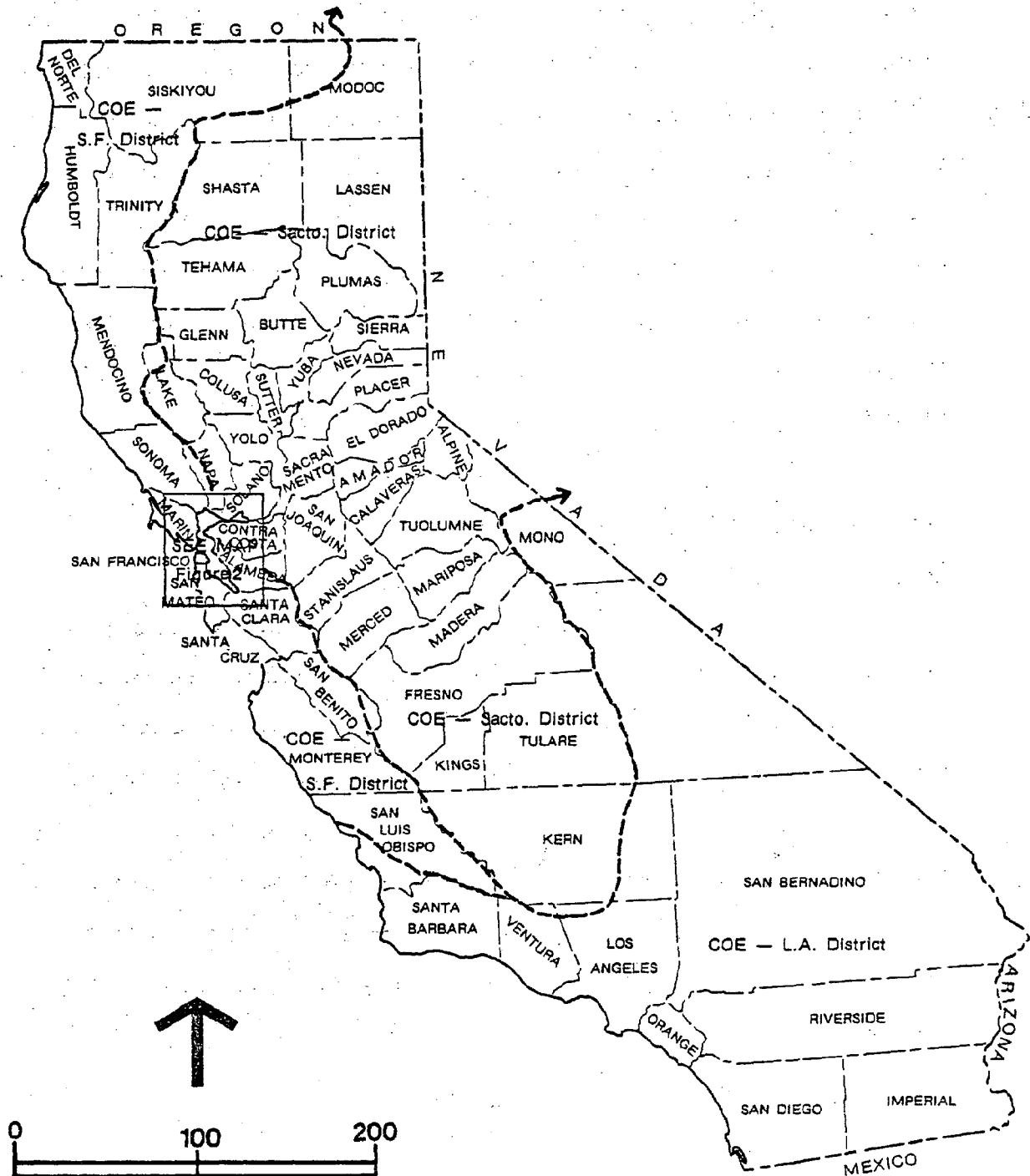


Figure 7

to one additional year may be needed if a project is controversial or requires an Environmental Impact Statement.

Corps regulations require consideration of all relevant factors and preclude permit issuance unless the project is found to be "in the public interest." Permit denial at the local and State level will always result in Corps denial. This ensures that State regulatory standards must be met as a minimum for Corps approval. Unlike the previous assertion of general deference to State determinations, this new policy assures compliance with State requirements and policies as a minimum. Furthermore, objections to a project by the EPA under FWPCA and the Ocean Dumping Act guidelines will also usually result in denial.

The counterpart to this, provides that where requisite State approvals have been granted, the Corps district engineer will normally approve the project. While stating that a deviation from this policy will only be done for some "overriding national factors of the public interest," a caveat must be noted. A large number of Federal laws must still have their requirements satisfied (overriding national factors of the public interest by definition) including NEPA, the Endangered Species Act, and others. Specifically, the Fish and Wildlife Coordination Act, including the Corps-Interior Memorandum of Understanding, must be complied with. This continues the existing situation of making virtually any unaccommodated objection by the U.S. Fish and Wildlife Service effectively a project veto. Local and State plans, no matter how comprehensive or widely accepted, however, are still only one factor taken into consideration. The result is that every local and State-approved project can be, and usually is, second-guessed by various Federal agencies responding to the Public Notice. These agencies are guided by their own perception of the public interest, and a "major objection," e.g., from the

U.S. Fish and Wildlife Service, requires resolution at the Secretarial level in Washington, unless the permit applicant is willing to modify his project to meet the objection. This procedure is mandated by the memorandum of understanding between the Secretaries of the Army and Interior and is the only case where the district engineer is not authorized to override the objections of a commenting agency.

When this type of impasse results, a "Section 20 Report" must be prepared, referring to Section 20 of the Corps regulations on Civil Regulatory Functions of April 3, 1974 (ER 1145-2-303). This is a lengthy report to the Chief of Engineers detailing all aspects of a project and requesting a determination. Making a decision at this level may add as much as one year to the Corps decision-making process. There has never been a need for a Secretary level evaluation for a dredging project within BCDC's jurisdictional area, but recent permit situations indicate that such a thing could happen.

Both the Army Corps of Engineers and the Environmental Protection Agency (EPA) have recently published proposed new regulations for implementing Section 404 of the Federal Water Pollution Control Act. These regulations were required by Natural Resources Defense Council v. Callaway, 389 F. Supp. 1263 7 ERC 1784 (D.C. March 27, 1975), which held the Corps to have abused its rule-making power by promulgating regulations that did not comply with the mandates of the authorizing legislation.

Under these new interim final regulations the Corps' permitting authority for disposal of dredge and fill material extends over traditionally navigable waters of the United States, both coastal and inland and also over a extensive range of other waters. These include all tributaries of navigable waters of the

United States, up to their headwaters, all interstate waters, all artificial channels or canals connected to navigable waters and used for navigation (thus, excluding drainage and irrigation channels) and all intrastate waters which are either used by interstate travelers for water related recreation, used for the collection of fish sold in interstate commerce, or used in the production of agricultural or industrial goods sold in interstate commerce. In addition, coastal and inland wetlands, defined in terms of inundation, vegetation and proximity to otherwise included waters will be included.

Lakes which are intrastate are covered only if greater than 5 acres in area or formed by the impounding of a navigable water. Stock ponds or settling basins formed in this way would be included. Jurisdiction up to the headwaters of rivers and streams and their tributaries will not generally be exercised above where the flow is less than 5 cubic feet per second.

The expanded jurisdiction will not be completely asserted at once. At present, jurisdiction is being asserted (and permits required) over traditionally navigable coastal and inland waters and adjacent or contiguous wetlands. On July 1, 1976, additional tributaries, lakes and wetlands will be included. Finally, on July 1, 1977, the full regulatory authority will be exercised.

This new geographical jurisdiction will require Corps approval to dispose of dredge or fill material with respect to a large number of waterways where no approvals were previously required. In the Bay Area, this will lead to the inclusion of small tributaries, lakes and wetlands not previously regulated by the Corps. A tremendous growth in Corps regulatory

authority will occur in the Central Valley and Sierra river systems and lakes.

Dredge material is defined as material excavated or dredged from one of the covered waters. Its disposal is defined to be the placement of more than one cubic yard of that material in a single operation into any covered water. However, material which otherwise meets this definition but results from normal farming, ranching, or forestry operations will not require a permit. Fill material and its discharge is defined to be any "pollutant" (essentially anything other than water) used to replace aquatic area with dry land or to change the bottom elevation of a water body or to impound water (as from construction of a dam). It likewise does not apply to material resulting from normal farming, ranching or forestry operations or to the maintenance or emergency repair of dams, dikes, levees or similar structures. These definitions were designed to eliminate the need for permits for such basic, common operations as plowing a field, seeding or maintaining a stock pond, activities which would likely have negligible direct water quality impacts.

Corresponding to the two year phasing in Corps regulatory activity, applicants will not need a Corps permit for activities in waterways prior to the time those waters are covered. However, since the Corps will have jurisdiction over the waters, even though not currently issuing permits, certain requirements must still be met. Water quality certifications must be obtained where appropriate (of particular significance with respect to hydraulic gold mining in Sierra streams) and there must be compliance with Coastal Zone Management Programs. There must be no harm to endangered species, no disposals near public water supply intakes or shellfish beds,

and there must not be high concentrations of pathogenic organisms.

The Regulations establish permit processing policies that greatly affect the relations between the Federal and State governments and provide possible mechanisms for faster processing.

The Corps will make an effort to unify State comments by requesting Governors to designate appropriate State agencies responsible for a single State position on applications. In California, where numerous State agencies, boards, and commissions are charged by State law with independent decision-making, there could be an unavoidable conflict with desired commenting unity.

Most significant with respect to the expediting of project applications are three new provisions:

1. District engineers are authorized to enter into agreements with States having their own permit program for joint processing, including the joint issuance of Public Notices, joint hearings, and the joint assessment of comments received on a project.
2. Approval of new dredging for navigation projects (including channels and slips) will also authorize periodic maintenance dredging, subject only to the applicant giving notice prior to the dredging being done, and to a review of the project at stated intervals.
3. Provision exists for the issuance of "general" permits by which a class or type of project is reviewed following all required procedures. Once the class is approved, individual projects in that class need no independent approval, although such can be required at the district engineer's discretion.

All the approved class activities must be similar in nature, both individual and combined environmental impacts must be minor, categories must be clearly described, and approved waters and material quantities must be clearly designated. General permits can be revoked if later found to be inappropriate or harmful.

This third element will reduce the expanded Corps' increased workload brought about by the tremendous increase in jurisdiction.

Finally, of particular significance to California, the Corps has formally put forth the policy that wetlands are areas of unique importance and irreplaceable. It would seem that approval of wetland projects would be very difficult to obtain.

The Corps' new regulations expand the Corps' geographical jurisdiction enormously and changes in the Corps' procedures are inevitable.

As a first review step, the Corps' regulations require the preparation of an environmental assessment on all applications to assist in determining whether an environmental impact statement is necessary. (In the San Francisco district they rarely are.) The environmental assessment is prepared by the District's Engineering Section within approximately 90 days, although procedures are currently being developed to reduce this time.

Within 15 days of completing the environmental assessment, a Public Notice is published advertising the project and soliciting comments for a 30-day period. Public Notice distribution is by means of a mailing, rather than by newspaper publication. The notice is mailed to persons and agencies that have indicated an interest in such projects, as well as certain agencies required by law or regulation to be notified. After

receiving comments and the decisions of the State permit-granting agencies, the Corps' district engineer generally acts on an application approximately 30 days after the close of the public Notice period, unless a public hearing has been requested or unless objections have been received.

The San Francisco District's procedures allow processing of permit applications without a Public Notice for projects less than 10,000 cubic yards involving land disposal above mean higher high water. This procedure, known as a "letter of permission", is essentially an abbreviated processing for very minor projects. Such projects are not subject to water quality review under either State or Federal law because no discharge into water is involved, and Corps jurisdiction, therefore, derives solely from Section 10 of the Rivers and Harbors Act. The San Francisco District has a permit staff of 25 persons, and estimates 20 to 30 percent of its time is involved with dredging permit applications.

The Los Angeles Corps District Office has no simplified procedures allowing permit processing for minor projects, and requires a Public Notice for every project involving dredging. Los Angeles has a permitting staff of 14, and estimates that dredging and disposal applications comprise about 10% of their workload.

The Sacramento Corps District office also uses full Public Notice procedures for all dredging permits. Sacramento has a small volume of dredging permit applications, comprising less than 10% of their 17-person permitting staff's workload.

APPENDIX E

ORDER ADOPTING REGULATIONS OF THE RESOURCES AGENCY

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11360.1)

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

(Agency)

Date of adoption, amendment, or repeal:

By: _____

(Title)

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ORDER ADOPTING REGULATIONS OF THE
RESOURCES AGENCY

Pertaining to the Coordination of
Dredging Projects in San Francisco Bay

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5) and pursuant to the authority granted in Section 162 of the Harbors and Navigation Code, the Resources Agency hereby adopts its regulation in Title 14, California Administrative Code, as follows:

- (1) Adopts new Chapter 2.5 to read:

CHAPTER 2.5. DREDGING PROJECTS IN SAN FRANCISCO BAY

ARTICLE 1. General

14200. Authority. The regulations contained herein are prescribed by the Resources Agency pursuant to the authority granted in Section 162 of the Harbors and Navigation Code for the purpose of implementing, interpreting, or applying Sections 160 through 170 of the Harbors and Navigation Code.

14201. Applicability. These regulations apply to new dredging in San Francisco Bay of 100,000 cubic yards or less within a 12-month period and to maintenance dredging in San Francisco Bay of any amount.

14202. Purpose. These regulations supplement and interpret Sections 160 through 170 of the Harbors and Navigation Code, as they may be amended from time to time. No attempt has been made to reproduce in these regulations the definitions, policies, and other provisions found in Sections 160 through 170. Therefore, these regulations should be read and used together with those sections.

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CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-2-

14203. Applicability of Chapter. The provisions of this Chapter shall be effective upon adoption and, subject to subsequent amendment, shall remain in effect until July 1, 1976.

ARTICLE 2. Abbreviations and Definitions

14210. Abbreviations. The following abbreviations are used in this Chapter:

- (a) BCDC--San Francisco Bay Conservation and Development Commission;
- (b) RWQCB--California Regional Water Quality Control Board, San Francisco Bay Region;
- (c) SLC--State Lands Commission;
- (d) COE--United States Army Corps of Engineers, San Francisco District; and
- (e) SWRCB--State Water Resources Control Board.

14211. Applicant. "Applicant" means any person or governmental agency that submits an application for a dredging project requiring the approval of the authorizing agencies.

14212. Application. "Application" means a request submitted on a form or forms, as approved and amended from time to time by the Resources Agency, for authorization to perform a dredging project.

14213. Authorizing Agency. "Authorizing agency" means any State agency that approves new or maintenance dredging projects in San Francisco Bay by granting or denying permits as defined in Section 14221. There are four such agencies--BCDC, RWQCB, SLC, and SWRCB.

14214. Comment. "Comment" means a written statement by a reviewing agency or other interested party concerning a proposed dredging project.

14215. Dredging. "Dredging" means any underwater excavation or extraction of materials using mechanical or hydraulic means.

14216. Dredging Project. "Dredging project" means (a) project to perform new dredging in San Francisco Bay of 100,000 cubic yards or less within a 12-month period, together with related dredge spoils disposal, (b) maintenance dredging of any amount, together with related dredge spoils disposal, or (c) disposal of dredged material.

14217. Executive Director. "Executive Director" means the Executive Director of the BCDC.

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-3-

14218. Local Agency. "Local agency" means any governmental agency, other than agencies of the Federal or State governments, that is responsible for carrying out or authorizing a dredging project.

14219. Maintenance Dredging. "Maintenance dredging" means any dredging in San Francisco Bay to (a) restore water depths authorized by the COE prior to September 17, 1965, (b) restore water depths that existed at a facility on or after September 17, 1965, or (c) restore water depths authorized by BCDC on or after September 17, 1965.

14220. New Dredging. "New dredging" means any dredging in San Francisco Bay other than maintenance dredging.

14221. Permit. "Permit," for the purpose of these regulations, means a document, such as a lease, permit, or other entitlement for use or discharge, issued by an authorizing agency approving a dredging project as specified in the document.

14222. Permit Coordinator. "Permit Coordinator" means the agency designated by the California Resources Agency to carry out the provisions of Sections 160 through 170 of the Harbors and Navigation Code.

14223. Permit Denial. "Permit denial" means the refusal of any authorizing agency to approve a dredging project.

14224. Reviewing Agency. "Reviewing agency" means a public agency that regularly submits comments to be considered by an authorizing agency in determining whether or not to approve specific dredging projects. In San Francisco Bay, reviewing agencies include, but are not limited to, the State Department of Fish and Game, the Environmental Protection Agency, Region IX, the United States Fish and Wildlife Service, the United States National Marine Fisheries Service, the COE, and the authorizing agencies when reviewing and commenting on specific dredging projects to another authorizing agency.

14225. San Francisco Bay. "San Francisco Bay" means the area described in Section 66610 of the Government Code.

ARTICLE 3. Implementation of Legislation

14240. BCDC is Permit Coordinator. The BCDC is the Permit Coordinator provided for in Section 161 of the Harbors and Navigation Code. The offices of the Permit Coordinator are located at 30 Van Ness Avenue, San Francisco, California, 94102.

14241. Executive Director. The Executive Director acts on behalf of the BCDC, and, except as otherwise expressly stated herein, the Executive Director is authorized to perform any act to be performed by the Permit Coordinator under these regulations.

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-4-

14242. Cooperation. The Permit Coordinator and the State authorizing and reviewing agencies shall seek cooperation with the Federal government whenever possible.

ARTICLE 4. Procedures for Processing Applications

14250. Steps to be Taken Prior to Submitting Application. Prior to submitting an application to the Permit Coordinator, an applicant shall:

- (a) Make preliminary contact with the Permit Coordinator.
- (b) Make preliminary contact with local agencies and determine local approval requirements.
- (c) Obtain a determination, if necessary, of which agency will be the lead agency and if an environmental document is required. For projects approved or sponsored by a local agency, the local agency will normally be lead agency. If no local approval is required, a State agency will normally be lead agency. The California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et. seq., or the State Guidelines issued by the Secretary for Resources, California Administrative Code, Title 14, Sections 15000 et. seq., provide for a determination of the lead agency and requirements for environmental documents and notices of exemptions.
- (d) Obtain a duly prepared and approved environmental document, if required, or a notice of exemption, for submission with the application.
- (e) Obtain approval of local agencies, or if no such approval is necessary, a statement by the local agencies to that effect.

14251. Submission of Applications. All applications for dredging projects shall be submitted to the Permit Coordinator.

14252. Determination of Readiness for Processing.

- (a) Permit Coordinator to Determine. The Permit Coordinator shall determine whether an application is ready for processing.

E-4

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-5-

(b) Test of Readiness for Processing. An application is ready for processing if the Permit Coordinator determines that:

- (1) All applicable questions have been answered completely and legibly.
- (2) All applicable supporting documents have been submitted.
- (3) Checks or money orders for the appropriate fees have been submitted.
- (4) The application has been certified and signed as specified on the application form.
- (5) The application includes an original and nine (9) copies of the entire application (including exhibits), with the original and three (3) copies bearing original signatures.

(c) Time Limit. The Permit Coordinator shall determine if an application is ready for processing within ten (10) days after the application is received.

14253. Application Not Ready for Processing. If the application is not ready for processing, the Permit Coordinator shall inform the applicant in writing and explain what additional information is needed. The Permit Coordinator may regard an application as inactive and return it to the applicant if the additional information is not received within thirty (30) days of mailing to the applicant of written notice from the Permit Coordinator. A new ten (10) day review period begins upon receipt of this additional information by the Permit Coordinator.

14254. Application Ready for Processing. Once the Permit Coordinator determines that an application is ready for processing, the Permit Coordinator shall so inform the applicant in writing, shall transmit the entire application to the authorizing agencies, and shall transmit to any reviewing agencies indicating an interest in the application, those portions of the application materials deemed appropriate. The Permit Coordinator may also forward the application to any local, State, or Federal governmental agencies deemed appropriate.

14255. Determination of Completeness by Authorizing and Reviewing Agencies.

- (a) Agencies to Advise Permit Coordinator. The authorizing and reviewing agencies receiving an application from the Permit Coordinator pursuant to Section 14254 shall, within fourteen (14) days of mailing, advise the Permit Coordinator

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WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-6-

in writing as to whether or not the application or new information submitted pursuant to Section 14258 is complete and, if not, what additional information is needed.

- (b) No Response. If any authorizing or reviewing agency does not respond within the time limit for determining completeness, it shall be deemed that the agency considers the application complete.
- (c) Application Incomplete. If the Permit Coordinator is notified that an application is incomplete, the Permit Coordinator shall within ten (10) days inform the applicant in writing and clearly explain what additional information is needed.
- (d) Response to Request for Additional Information. In the case of an incomplete application, all required additional information must be submitted to the Permit Coordinator within thirty (30) days of mailing the notice described in subsection (c) above. When the additional information required has been submitted, the Permit Coordinator shall forward the amended application to the same agencies that received the original and upon forwarding, the fourteen (14) day review period described in subsection (a) above will recommence. If the thirty (30) days pass and the required information has not been supplied, the Permit Coordinator may regard an application as inactive and return it to the applicant.
- (e) If Application is Complete. Upon receiving notification from each agency that received an application as specified in Section 14254 that an application is complete, or passage of fourteen (14) days from mailing as specified in Section 14255(a), the application shall be deemed filed with all authorizing agencies. The Permit Coordinator shall within ten (10) days inform the applicant and the agencies in writing that the application has been filed.

14256. Request for Extension of Time. An applicant may request an extension of time to supply the additional information which may be required under the provisions of Sections 14253 and 14255 of this Chapter by so notifying the Permit Coordinator in writing. The Permit Coordinator may approve such a request by granting a period of up to thirty (30) days in addition to that otherwise authorized by those Sections and by so informing the authorizing and reviewing agencies.

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-7-

14257. Processing by Authorizing Agencies with Comments by Reviewing Agencies.

- (a) Permit Processing to Start. An authorizing agency shall begin processing an application upon receiving notification from the Permit Coordinator that the application has been filed.
- (b) Fees. All filing and other fees required by any agency to be paid before an application is processed shall be submitted to the Permit Coordinator and held by the Permit Coordinator until the application is deemed filed as specified in Section 14255(e). Upon filing an application the Permit Coordinator shall release the applicant's fees to the appropriate agencies.
- (c) Procedures for Granting a Permit. Sections 160 through 170 of the Harbors and Navigation Code do not alter the manner in which the authorizing and reviewing agencies process applications. These agencies will continue to process applications in accordance with their existing procedures, and, in the case of an authorizing agency, shall also send a copy of their decisions to the Permit Coordinator setting forth the reasons therefor:
- (1) For Agencies With No Time Limits Set by Law Prior to January 1, 1975. Authorizing and reviewing agencies that have no statutory time limitations for action on dredging projects or have no title interest in the dredging project site must comment in writing (including a statement of no comment) or take action to approve or deny a permit and report their determinations to the Permit Coordinator within sixty (60) days of that date the application is deemed filed under Section 14255.
 - (2) For Agencies that have Time Limits Set by Law Prior to January 1, 1975. Authorizing and reviewing agencies that have statutory time limits within which to act upon an application for a dredging project or have a property interest in the dredging project site will continue to act in accordance with those time limits, except that within sixty (60) days of the date the application is deemed filed, each agency shall send the Permit Coordinator a report of the current status of the application within the agency together with any comments the agency wishes to be considered by the other agencies.

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CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-8-

- (3) If an Authorizing or Reviewing Agency does not Respond. If no response is received from an authorizing or reviewing agency within sixty (60) days or the time specified by law, it shall be deemed that the agency has no comment on the application and the Permit Coordinator shall so notify the applicant.
- (d) Permit Coordinator to Notify Applicant. If the Permit Coordinator receives comments, status reports, or agency decisions concerning an application, the Permit Coordinator shall so notify the applicant within ten (10) days after the end of the sixty (60) day reviewing period, or sooner if all required comments or authorizations are received.
- (e) If an Authorizing Agency does not Act. In case an agency fails to act on an application within the time limits established by Sections 160 through 170 of the Harbors and Navigation Code and this Chapter, the existing regulations or statutes of each agency so failing to act will govern the status of permit approval or permit denial as appropriate to that agency.

14258. Submission of New Information. If the applicant desires to submit new information for an application that has previously been filed, the applicant may do so by first informing the Permit Coordinator in writing of such a desire. If, in the opinion of the Permit Coordinator, the new information constitutes a material change in the application, the Permit Coordinator shall notify the applicant, the authorizing agencies, and the reviewing agencies that a new review period under Section 14255 will commence beginning on the date the Permit Coordinator forwards the new information.

14259. Permit Coordinator to Compile Results. The Permit Coordinator shall receive the decisions of the authorizing agencies and compile a report of State and local agency decisions, reports, comments, and findings for transmittal with a summary to the applicant and to the COE.

- (a) Permit Granted. If all authorizing agencies issue a permit for a dredging project, the project shall be considered authorized in accordance with the terms and conditions of each such permit.
- (b) Permit Denied. If any authorizing agency denies a permit for a dredging project, the project is not authorized.
- (c) Time Limit. Within ten (10) days of receiving permits or denials from the authorizing agencies, the Permit Coordinator shall forward the compiled report and summary.

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

-9-

ARTICLE 5. Withdrawal of Application

14270. Withdrawal to be Made in Writing. An applicant may withdraw an application at any time by so informing the Permit Coordinator in writing.

14271. Permit Coordinator to Inform Agencies. The Permit Coordinator shall notify the authorizing and reviewing agencies if an application is withdrawn or becomes inactive and is returned.

14272. Return of Fees. If an application is withdrawn after it has been deemed filed under Section 14255(a), the fees or a portion of the fees will be returned by the agencies according to each agency's laws and regulations. If an application is withdrawn prior to having been deemed filed, the Permit Coordinator will return the entire fee.

Disclaimer

Pursuant to Section 2231 of the Revenue and Taxation Code, the Secretary for Resources has determined that there are no State mandated local costs incurred under the provisions of this Chapter since there are no new local programs established and there is no increase in the levels of existing local programs.

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APPENDIX F

INFORMATION FOR OBTAINING AUTHORIZATION FOR DREDGING

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-1860

PERMIT COORDINATOR

INFORMATION
FOR OBTAINING
AUTHORIZATION FOR DREDGING

This brochure will explain how to complete the application, and the jurisdiction and procedures of the agencies involved. The appendix contains detailed information you will find helpful in completing the application.

Revised November 21, 1975

CONTENTS

	Page
INTRODUCTION	1
Section 1. Getting Permission to Dredge	2
Section 2. How to Fill Out the Form	
Section 3. The Regulatory Agencies, Their Procedures and Interests in Dredging	5
Section 4. Appendices	
Appendix I Addresses and Telephone Numbers of the Agencies	13
Appendix II Fees	14
Appendix III Regional Water Quality Control Board Policy for the Regulation of Dredge Spoil Disposal	15
Appendix IV Environmental Protection Agency Dredge Spoil Disposal Criteria	17
Appendix V Map of Aquatic Disposal Sites	24
Appendix VI Form for Sediment Analysis	25
Appendix VII Questionnaire	26

INTRODUCTION

This brochure is intended to help you apply for permits to dredge in San Francisco Bay. It contains information on the regulatory agencies and tells how to fill out the application form for a dredging project. The form is a standard form acceptable to all the State agencies you must contact.

California legislation has set up a temporary effort (authorization expires July 1, 1976) to coordinate applications for permission to conduct maintenance dredging of any amount or new dredging of 100,000 cubic yards or less within one year in the geographical area of jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC).

If your project is affected by the law described above and does not include construction activity other than dredging, you should fill out an application form and give it to the Permit Coordinator in the BCDC office (projects for work other than dredging are not affected by the legislation). The Coordinator will send it to the agencies for you. The authorizing State agencies are: BCDC, Regional Water Quality Control Board (RWQCB) and State Lands Commission (SLC). The Federal authorizing agency is the U.S. Army Corps of Engineers (COE). The Permit Coordinator does not coordinate Federal agency processing of your application, but if you wish, will also help you apply for a COE permit. The Coordinator will follow your application through all the steps of the State process and keep you informed of its progress.

Quite often applicants can save considerable time and money by meeting with the agency staffs to discuss projects before undertaking extensive planning and engineering. Thus, consultation with staff personnel prior to submitting the application is recommended. In some cases, as with the RWQCB, this prior consultation is necessary before your application can be accepted for processing.

Your help in evaluating the coordination effort is desired. You are encouraged to return your comments and suggestions to the Permit Coordinator using the questionnaire supplied in Appendix VII, on page 25.

Please feel free to contact the Permit Coordinator at (415) 557-1860 for additional information.

SECTION 1: GETTING PERMISSION TO DREDGE

Besides the approval of local agencies (city, county, port authority, etc.) depending on the location of your project, four agencies may have to grant you permission to dredge. These agencies are:

- (1) San Francisco District, U. S. Army Corps of Engineers (COE);
- (2) San Francisco Bay Conservation and Development Commission (BCDC);
- (3) San Francisco Regional Water Quality Control Board (RWQCB); and, in some instances;
- (4) State Lands Commission (SLC).

STEPS IN PERMIT PROCESSING

1. Check with local authorities, the, if required, obtain approval for the project from the county, city, port authority or other local agency with jurisdiction, and either a certified EIR, Negative Declaration, or a Certificate of Exemption.
2. Consult with the RWQCB staff and Environmental Protection Agency (EPA) to determine the number, location, and nature of sediment analysis tests that may be needed, and with the staffs of BCDC, SLC and the COE to determine their interests in your project.
3. Assemble the supporting documents listed on pages 3 through 8 of the following instructions.
4. If you believe it is complete, submit your application to the Permit Coordinator, who will send it to BCDC, RWQCB, SLC, and other agencies. The Permit Coordinator does not coordinate Federal agency processing of your application, but, if you so desire, will forward your dredging application to the COE. After that, it is your responsibility to work with the COE and the other Federal agencies.

SECTION 2: HOW TO FILL OUT THE FORM

The following guide is provided to assist you in filling out the application.

Fill out the application form and provide the required attachments. Submit one complete original to the Permit Coordinator. After the Coordinator has screened your application, you will be asked to provide nine (9) more copies.

I. APPLICANT INFORMATION

A. OWNER:

An owner is a person or governmental agency that claims legal title to the site where your project will take place.

An owner's representative is a person or governmental agency fully authorized in writing to act on behalf of the owner in all matters relating to your application.

B. APPLICANT:

An applicant is a person or governmental agency who submits the application for a dredging project.

C. CERTIFICATE OF APPLICANT:

The applicant or applicant's representative should sign and date the application.

II. PROJECT INFORMATION

Complete the questions and attach a narrative description of your project. This description should be complete, but brief since it will be used to describe your project in various notices.

The description should briefly and exactly describe the work proposed, the nature, amount (cubic yards), and depth (with reference to mean lower low water (MLLW)), and extent (acreage or square feet) from which submerged material is to be removed, the

disposal method and area, the method of removal, flow rate of return water in gallons per day if done hydraulically, and the estimated dates of commencement and completion. State the present use(s) of the area to be dredged, the disposal area if on land, and the land and water in the immediate vicinity.

If you have a project that involves construction as well as dredging, you should briefly describe the construction portion of your project. Some of the agencies you will deal with when you get your permission to dredge will require that you provide further information regarding the construction portion of your project. When you contact the agency staffs, you should ask about how the construction portion of your project will be handled by the agency when it issues your permission to dredge.

III. PROCESSING

A. APPROVAL BY LOCAL AGENCIES

List all approvals or certifications required by local agencies for any work proposed in this application.

B. PRIOR AGENCY CONTACT

State when you first advised staffs of the agencies listed or show that they have not been informed. It is strongly advised that you contact the agency staffs early in your schedule and before you submit your application to the Coordinator.

C. SUBMISSION TO COE.

Permission to dredge must be granted by the Corps of Engineers in addition to the state agencies. You may either get the Corps approval yourself or have the Coordinator help you. The COE form is similar to the Coordinator's form. Generally, if you have answered a question on the Coordinator's form, you may eliminate duplication by attaching the Coordinator's form to the COE form and writing the words "See attached sheets" in the appropriate sections of the COE form. IT IS ESSENTIAL, HOWEVER, THAT THE APPLICANT SIGN BOTH FORMS.

IV. ATTACHMENTS - Provide one set of attachments with each copy of your application.

1. Local Report. The local government unit (e.g., county, city, port authority, flood control district, etc.) having jurisdiction over the proposed project should be notified by the applicant and given an opportunity to review the project for compliance with local requirements and to make a "local report" which must be attached to this application. In cases where a report has not been issued the fact that the local government has been contacted must be verified. In that case, the applicant must attach his dated request for the report so the time within which BCDC must consider the application can be determined. In cases where the local government does not wish to make a report, application processing can be expedited by attaching a letter from the local government stating that no approval is required.

Usually a permit, resolution or letter from a government official constitutes a report. A report contains the following information: (a) a description of the project reviewed; (b)(1) approval (with or without conditions) or disapprovals of the application, with reasons therefore, or (b)(2) an informal statement on the project; (c) such additional information, comments, or questions as the local government may wish to make known.

2. Ownership. For the area(s) from which submerged materials are to be extracted and the area(s) in which materials are to be placed, attach an

exact written legal (metes and bounds) description, a current title insurance report (preliminary or final) or other evidence of ownership, and a property map which includes the names and addresses of adjacent land owner. If the applicant does not own the area, state in detail the legal relationship of the applicant to owner (e.g., lessee, licensee, authorized agent, etc.) and attach written evidence of this relationship (e.g., lease agreement, license, etc.). State if a permit or a license is required from the State Lands Commission.

3. Citizenship and Corporate Certification (Required for SLC; not for other public agencies). If an applicant is an individual person(s), attach evidence of citizenship, e.g., copy of birth certificate, certification of naturalization, etc. If applicant is a firm or corporation, attach a certified statement of the names of the corporate president, secretary, and officer(s) authorized to execute corporate contracts. In addition, attach a copy of certificate of incorporation issued by the State of California authorizing the applicant to transact business in the State. If the State Lands Commission already has this information on file, or if the project does not involve State land, you need not submit it with this application.

4. Drawing. Provide plans and sections capable of reproduction. The following is a checklist of the drawing requirements. (A sample drawing is shown on page 7).

a. General

- | | |
|--|---|
| <input type="checkbox"/> Submit on 8-1/2 X 11 inch paper. Submit the fewest number of sheets necessary to adequately show the proposed activity. Drawings should be in accordance with the general format of the enclosed sample drawing and must be of good reproducible quality. | <input type="checkbox"/> Show distance between proposed activity and navigation channel where applicable. |
| <input type="checkbox"/> A 1-inch margin should be left at the top edge of each sheet for binding purposes. The bottom margin should be 1/2 inch, and the side margins 1/4 inch. | <input type="checkbox"/> Show name of waterway. |
| <input type="checkbox"/> Drawings should not reflect the approval, non-objection, or action of any agencies. | <input type="checkbox"/> Show name of and distance to local town, community, or other identifying location. |
| <input type="checkbox"/> Since drawings must be reproduced photographically, color shading cannot be used. Drawings may show work as dot shading, hatching, cross-hatching, or similar graphic symbols. | <input type="checkbox"/> Identify map or chart from which vicinity map was taken, if applicable. |
| | <input type="checkbox"/> Show graphic scale. |
| | <input type="checkbox"/> Show north arrow. |

c. Plan View

- () Show existing shorelines.
- () Show ebb and flood in tidal waters and direction of flow in rivers.
- () Show north arrow.
- () Show graphic scale.
- () Show mean higher high water line and mean lower low water line. Show ordinary high water line and ordinary low waterline if proposed activity is in a lake or stream.
- () Show line of highest tidal action.
- () If applicable, show principal dimensions of structure or work and extent of encroachment beyond the applicable high water line.
- () Indicate number of cubic yards, type of material, method of handling, and location of fill or spoil disposal area. If spoil material is to be placed in approved disposal site, a separate map showing the location of the site may be attached. The drawing must indicate proposed retention levees, weirs, and/or other devices for retaining hydraulically placed materials.

- () Show and identify structures (if any) in navigable waters immediately adjacent to the proposed activity including COE permit numbers if known.

- () Show your property lines and identify adjacent property owners. (On narrow waterways the property owner on the opposite shore must also be identified.)

d. Elevation and/or Section Views

- () Show same water elevations as for plan view.
- () Show dredging grade. (MLLW datum)
- () If a fill, float or pile supported platform is proposed, show dimensions and identity of any structures to be erected thereon.
- () Show graphic scale.

e. Notes on Drawings.

- () List names of adjacent property owners whose property also adjoins the water if not shown in plan view.
- () State purpose (private use, commercial, etc.) of proposed activity.
- () If petroleum products or other hazardous material will be stored or handled at the proposed facility, so indicate.

- - - - -

5. Environmental Impact Report. Your dredging application will not be considered complete until the environmental documentation required by the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et seq.) (CEQA) is provided.

CEQA requires that a public agency must prepare and certify the completion of an Environmental Impact Report (EIR) prior to acting on any permit application which may have a significant effect on the environment. If the public agency finds, on the basis of a factual study, that a project will not have a significant effect on the environment, it may prepare a Negative Declaration. CEQA applies to both State and local agencies,

but it provides that only one EIR or Negative Declaration shall be prepared for any project. The EIR is prepared by a public agency called the "Lead Agency." Sections 15064-15065.5 of the State EIR Guidelines set forth criteria for designating the Lead Agency, and these sections also establish the Lead Agency's responsibilities. CEQA requires that other public agencies having discretionary authority over the project must consider the Lead Agency's EIR or Negative Declaration prior to acting on the project.

If your project involving the proposed dredging operation requires discretionary approvals from a city or county, that city or county would be the Lead Agency for preparation of the EIR or Negative Declaration. If no discretionary approvals are required from a local agency, the Lead Agency would be a State agency which has discretionary authority over the project. Usually this would be the State Lands Commission. If no permit is required from the State Lands Commission, BCDC would be the Lead Agency unless another State agency has significant discretionary authority over the project.

Some public agencies require submission of data and information to aid them in determining whether a project may have a significant effect on the environment. You should contact the Lead Agency to determine its procedures for complying with CEQA. You can assist the Lead Agency by identifying other public agencies which you know to have discretionary authority over your project.

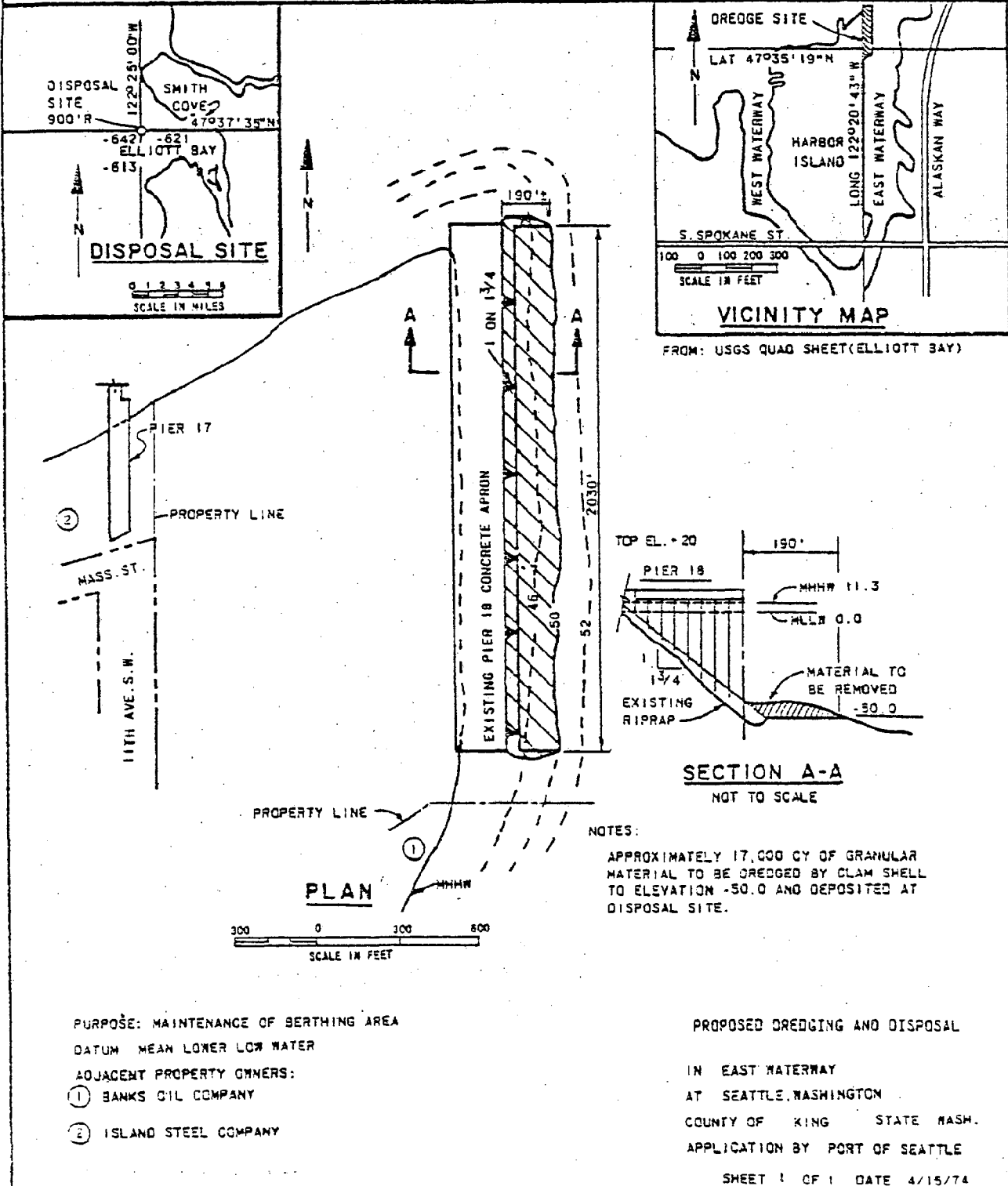
Where a dredging permit must be obtained from the U.S. Army Corps of Engineers or any other Federal agency, the National Environmental Act of 1969 (United States Code Title 42, Section 434, et seq.) (NEPA) requires the Federal agency to prepare an Environmental Impact Statement prior to issuing a permit, if the permit issuance is, or involves, a major Federal action significantly affecting the human environment. You should contact the Corps of Engineers for its procedural requirements in complying with NEPA. If a Federal Environmental Impact Statement must be prepared, bring this to the attention of the CEQA Lead Agency. There may be ways to coordinate preparation and review of State and Federal environmental documents.

If you wish a copy of the State EIR Guidelines, which apply to CEQA requirements, you may order a copy for \$2.12 from the Documents Section, Department of General Services, P.O. Box 20191, Sacramento, California 95820.

6. Fees. Pay the fees in accordance with the schedule shown in Appendix II. Verify the amount needed with Coordinator; pay using individual checks payable to each agency. The Permit Coordinator will distribute your filing fees to the appropriate agencies. Refunds must be claimed from each agency separately.
7. Sediment Analysis. You are required to present an analysis of your sediments or elutriate in order that your application may be deemed complete.

SAMPLE DRAWING

Top Margin 1" minimum



Side Margin 1/4" minimum

Side Margin 1/4" minimum

Bottom
Margin 1/2" Minimum

The RWQCB will tell you just how you must comply with this provision. Therefore, you should talk to the RWQCB and EPA staff about the analysis before submitting your application. The Appendix IV contains the most recent EPA guidelines and RWQCB's current policy is found in Appendix III. You should use the form in the Appendix VI on page 25 to report the sediment analysis results.

VI. You are requested to use the questionnaire in Appendix VIII and make suggestions to the Permit Coordinator at any time on how to improve the permit process.

SECTION 3. THE REGULATORY AGENCIES, THEIR PROCEDURES, AND INTERESTS IN DREDGING

PERMIT COORDINATOR: (415 - 557-1860)

The Permit Coordinator (BCDC) is your most important point of contact for processing dredging applications in the Bay Area. Once an application for State dredging is submitted to the Permit Coordinator, the Coordinator will forward it to the other agencies for processing; there are ten (10) days in which to do so. After the other agencies receive your application, they will tell the Coordinator if there is enough information to be a complete application. The law specifies that this must be done in a reasonable amount of time, which has been determined to be fourteen (14) calendar days. If the application is complete, the Coordinator will tell you in writing, and your application will be filed by each agency for processing. If it is incomplete, the Coordinator will tell you in writing what additional information is needed. If you do not submit that information within thirty (30) days, your application will be considered inactive. Should that deadline expire, you may, of course, re-apply.

Once the agencies have received your complete application, they will act upon it in accordance with their procedures. Agencies having no time limit set by law must formulate comments and inform the Coordinator within sixty (60) days. If the agency has a time limit in which to act, it must at least advise the Coordinator of the status of your application and any comments within sixty (60) days. The Coordinator will tell you what has taken place. If the agencies do not respond within the sixty (60) days or the time set for them by law, they will be regarded as having had no comment on your application. Once your permit has been granted or denied, the agency making the decision will tell the Coordinator. Within ten (10) days, the Coordinator will mail you and the Corps of Engineers a copy of the permits and comments prepared by State agencies. These permits and comments constitute the State's comments to the COE and with which the COE can act on your application.

U. S. ARMY CORPS OF ENGINEERS (COE)

Section 10 of the Rivers and Harbors Act of March 3, 1899, provides that dredging in navigable waters must be authorized by the Corps of Engineers. Section 404 of the Federal Water Pollution Control Act Amendments of 1972, provides that the Corps must authorize the discharge of dredged material into navigable waters. Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, provides that the Corps must authorize the transportation of dredged material for the purpose of dumping it in ocean water. The San Francisco District

Office of the Corps implements these Acts in the San Francisco Bay Area using criteria established by the Environmental Protection Agency.

The Corps cannot act or make its decision on your application until it has received comments from the U.S. Department of Interior, Environmental Protection Agency, U.S. Department of Commerce (NOAA), and the State Resources Agency, and until the State Water Resources Control Board has issued its certification.

A Public Notice will be issued by the Corps within thirty (30) days of receiving your application. If substantive objections are received in response to the Public Notice, the applicant will be informed of the objections and be given an opportunity to resolve them. The District Engineer determines whether a public hearing will be held. He will consider the degree of interest by the public in the permit application; any requests by the applicant or responsible Federal, State, and local authorities that a hearing be held; and the likelihood that significant new information will be presented. Any person who has an interest which may be adversely affected by the issuance of a Corps of Engineers' permit for the work described in this notice may request a public hearing. The request must be submitted in writing to the District Engineer within thirty (30) days of the date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which it may be so affected by the activity.

The decision to issue a U.S. Army Corps of Engineers' permit will be based on an evaluation of the impact of the proposed work on the public interest. Factors affecting the public interest include, but are not limited to, navigation, fish and wildlife, water supply, flood damage prevention, eco-systems, and in general, the needs and welfare of the people.

Questions can be addressed to the Regulatory Functions Branch staff of the San Francisco District at (415) 556-5178 or 556-5489.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC)

BCDC is a State agency with regulatory power over dredging within San Francisco Bay. It operates under the provisions of the McAteer-Petris Act (Government Code Title 7.2), and has adopted a plan for San Francisco Bay as well as a number of procedural regulations. The jurisdiction of BCDC is described in Government Code Section 66610, and includes; San Francisco Bay, a 100-foot shoreline band, salt ponds, managed wetlands, and certain other waterways. BCDC may issue one of two kinds of permits, depending on the scope of your proposed project. These permits may be either major or administrative (minor) permits. Copies of the McAteer-Petris Act or the BCDC Regulations are available at the BCDC office, and the staff can help explain them as they affect your project. BCDC also has available a pamphlet entitled "Information for Permit Applicants" which you may find helpful.

If your project involves work other than dredging and disposal in an approved aquatic site, or disposal as fill in an approved site, or disposal outside of the BCDC jurisdiction, you may be required to apply separately with BCDC for a major permit. If that is the case, BCDC will notify you through the Coordinator.

Certain dredging projects in the Bay may be exempt from BCDC permit requirements if dredging began prior to September 17, 1965; and is now being carried on under a renewal or extension of an Army Corps of Engineers permit.

The BCDC phone number is (415) 557-3686.

SAN FRANCISCO REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)

The RWQCB is the regional agency of the State Water Resources Control Board. Both the Regional Board and the State Board are important to your proposed dredging project. These Boards regulate the water quality aspects of dredging and dredge spoil disposal, acting under provisions of the Porter-Cologne Water Quality Control Act as amended in 1972. The Regional Board will issue waste discharge requirements for your project, while the State Board must certify to the Corps of Engineers that your project will not violate applicable Federal or State standards. Division 7 of the Water Code tells about the RWQCB jurisdiction; the Regional Board's jurisdiction generally includes the bays, rivers, and watersheds of the Bay Area.

The RWQCB will receive your application from the Coordinator and process it according to its own procedures. The RWQCB will issue your Waste Discharge Requirements. The RWQCB will make a recommendation of approval or denial of certification to the State Board. The State Board will normally act on the RWQCB recommendation within two to four weeks. If a hearing is necessary the State Board will require more information than the RWQCB used in reviewing your application, and will request that additional information be submitted. The certificate issued by the State Board will be sent to the Coordinator for inclusion in the reports forwarded to you and to the COE. The COE cannot act until it has received the certification of the State Board.

The RWQCB considers the opinions of other reviewing agencies and will specifically examine your project to see if it meets the provisions of Sections 301, 302, 306, and 307 of the Federal Water Pollution Control Act as amended. The RWQCB staff is available to help you understand just how these provisions apply to your project. If you would like detailed information regarding certification, the regulations are contained in Subchapter II, Chapter 3, Title 23 of the State Administrative Code. The RWQCB regulatory policies for dredging are contained in the Regional Board Resolution enclosed in the Appendix. A new dredging policy will probably be set in the near future. The RWQCB needs about 60 days in which to process your permit.

The RWQCB may also prepare a "letter of withdrawal." This is a letter to the Corps stating that since there is no adverse impact on water quality, the COE should withdraw its request for certification. It should be understood that the Standard Application Form is also a formal request for certification which will be granted or denied unless the RWQCB sends the Coordinator a letter of withdrawal.

An application is considered complete if it has met the Permit Coordinator's requirements and includes the sediment analysis as required by the RWQCB Executive Officer, cost analysis for various methods of disposal, and economic and social impact data. This policy of the RWQCB is contained in a motion adopted on October 15, 1974.

You must consult with the RWQCB staff to determine the number and location of sediment samples prior to submitting your application. Please contact the engineer responsible for certification and special activities.

The Regional Board's phone number is (415) 464-1255.

STATE LANDS COMMISSION (SLC)

The SLC is a State agency which regulates dredging on lands in which the State has ownership or property rights (such as mineral rights). The Commission will want to know who owns your site(s), who has any leases on your site, and whether or not you propose to remove or cover minerals. The State acts through the SLC as owners of the material (sand, gravel, etc.) on the sovereign lands of the State of California and certain grant lands. Permits are required from the SLC by Section 6303 of the Public Resources Code to either remove from or deposit material on the State's sovereign lands in San Francisco Bay. A lease is required if materials from certain grant lands or sovereign lands are to be dredged for commercial purposes.

The Commission, in determining if a lease should be granted, does not have to await written comments before commencing to process your application. Particular attention will be paid to the Environmental Impact Report prepared (if required) by the SLC Staff using the data you supply with your application.

In certain instances if material removal is for commercial resale, then certain bidding procedures will be employed, the lease being issued to the highest bidder. In any instance where material removed is to be placed upon private property (not returned to State Lands), then a charge per cubic yard will be made.

The SLC will receive your application from the Coordinator and process it according to its procedures. If you have a valid lease for your site, the Commission will probably complete processing your application form within about 60 days, but if you need to be granted a permit or a lease, the Commission's procedures will take about six months. If you have clear title, that is, if the State has no legal interest in the land, the Commission will forward any comments within sixty (60) days. However, since the SLC is not a regulatory agency, but property owner, the applicant will be responsible to negotiate directly with SLC staff for your permit or lease. The Permit Coordinator will not hold State comments and regulatory permits until the SLC action is final. The processing of your permit or lease by SLC will proceed concurrently with the actions of the other agencies (including the Federal agencies). Those agencies will normally approve your project with the condition that it becomes valid if your SLC permit or lease is granted.

Questions can be addressed to the SLC staff either by mail or by phone at (213) 435-6681.

OTHER AGENCIES

Before action can be taken by some of the permitting agencies, several Federal and State agencies are required by law or policy to review applications for dredging permits and to submit their comments for consideration.

Some of the agencies that usually review each application in detail are listed below with brief remarks about their interest in dredging:

1. United States Environmental Protection Agency (EPA)

EPA in conjunction with the COE sets dredge spoil disposal criteria and requirements for sediment analysis. Besides these policy-making and regulatory functions, EPA serves as a commenting agency for dredging projects. With respect to its interests as a reviewing agency, EPA will look at proposed projects with particular attention to their air and water quality impacts, including the indirect impacts associated with related construction projects (such as shopping centers, factories and complex sources). For dredging projects with open water disposal, EPA is most interested in the comparison of sediment analysis with site criteria. For dredging projects involving land disposal, EPA will look closely at any proposed effluent discharge, impacts on critical areas (such as marshlands), and other aspects.

The EPA criteria and an explanation of sediment analysis requirements are included in Section III.

2. United States Fish and Wildlife Service (USFWS)
United States National Marine Fisheries Service (NMFS)

These agencies have been delegated the responsibility of conserving the fish and wildlife resources of the nation. Therefore, they review a maintenance dredging application with particular attention to the sediment analysis (to determine the pollutant characteristics of the material) and the spoil site (to determine the suitability of the proposed site in relation to the effect of spoiling on fish and wildlife). New dredging review procedures are similar but given more intensive review. In addition, these agencies are concerned with the location and time of year that dredging and aquatic disposal activities will occur.

3. California State Department of Fish and Game (F&G)

This agency is similarly interested in sediment analyses and spoil sites. Also, the Department is concerned with the time of year that any Bay aquatic spoil site will be used, with the impact of land disposal on wildlife, and with any spoil effluent discharge associated with a proposed land disposal site. The F&G comments are closely considered by RWQCB for the issuance of Waste Discharge Requirements and by the State Water Resources Control Board for certification.

4. State Clearinghouse

In case you have to prepare an environmental document as part of your application, your lead agency should forward copies of the document to the State Office of Planning and Research (State Clearinghouse). The Clearinghouse will circulate the document to State agencies for comment and respond to the lead agency. More information about environmental documents is found in Section IV of this brochure.

5. Other Agencies Routinely Asked for Comments

The Coordinator will send a condensation of your application to governmental agencies and private parties with possible interests in your proposed project. These agencies and parties may include organizations such as the State Departments of Transportation, Water Resources, Parks and Recreation, Conservation and Navigation and Ocean Development, Bay Area Air Pollution Control District, U.S. Bureau of Outdoor Recreation, Sierra Club, Save the Bay, local ecology centers, and so on.

APPENDIX I

ADDRESSES AND TELEPHONE NUMBERS OF THE AGENCIES

Mail application to:

Dredging Permit Coordinator
c/o San Francisco Bay Conservation and
Development Commission
30 Van Ness Avenue, Room 2011
San Francisco, CA 94102
Phone: (415) 557-1860

Agencies you may wish to contact for information are:

(Permit granting agencies)

- | | |
|--|--|
| a. (COE)
Regulatory Functions Branch
U.S. Army Corps of Engineers
San Francisco District
100 McAllister Street
San Francisco, CA 94102
Phone: (415) 556-5178 | c. (SLC)
State Lands Commission
State Lands Division
100 Ocean Gate, Suite 300
Long Beach, CA 90802
Phone: (213) 435-6681 |
| b. (BCDC)
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue, Room 2011
San Francisco, CA 94102
Phone: (415) 557-3686 | d. (RWQCB)
San Francisco Regional Water
Quality Control Board
1111 Jackson Street
Oakland, CA 94612
Phone: (415) 464-1255 |

(Reviewing Agencies)

- | | |
|--|--|
| a. (USFWS)
United States Fish and Wildlife
Service
2800 Cottage Way, Room E-2727
Sacramento, CA 95825
Phone: (916) 484-4731 | c. (EPA)
Environmental Protection Agency
Region IX
100 California Street
San Francisco, CA 94111
Attn: Chief, Permits Branch,
Enforcement Division |
| b. (F & G)
Department of Fish and Game
Region III
P.O. Box 47
Yountville, CA 94599
Phone: (707) 944-2443 | d. (NMFS)
National Marine Fisheries
Service
Southwest Region
P.O. Box 98
Tiburon, CA 94920
Phone: (415) 556-0565 |

APPENDIX II

FEES

1. Permit Coordinator: none
2. Corps of Engineers: (Only if discharged in navigable waters)
 - For projects involving 2500 cu. yds. or less.....\$ 10.00
 - For projects involving more than 2500 cu. yds.....\$ 100.00
3. Bay Conservation and Development Commission:
 - All routine maintenance dredging of whatever amount,
and any new dredging less than 100,000 cubic yards
within a 12-month period\$ 100.00
 - Work which qualifies for a BCDC major permit\$ 300.00
to
\$2,500.00
4. Regional Water Quality Control Board:

You must pay a fee for the setting of waste discharge requirements and another fee for certification. The amount of each fee should be calculated as follows:

<u>TYPE OF DREDGING</u>	<u>UNIT</u>	<u>FEES</u>		
		<u>Under</u> 25,000 <u>cu. yds.</u>	<u>25,000 -</u> 500,000 <u>cu. yds.</u>	<u>Over</u> 500,000 <u>cu. yds.</u>
Dredging operations with spoils disposal such as navigational dredging, marina development and stream bed modification.	Quantity of material to be dredged	\$100	\$100 + (1.8 x thousands of cu. yds.	\$1,000
		<u>Under 500</u> <u>Tons/Day</u>	<u>500-5000</u> <u>Tons/Day</u>	<u>Over 5000</u> <u>Tons/Day</u>
Product dredging operations, such as sand, gravel or mineral removal.	Maximum Daily Production Rate	\$100	\$0.20 x (Tons/Day)	\$1,000

It is possible that the Waste Discharge Requirement fee only may be waived in cases of aquatic disposal at an approved site. The RWQCB staff will tell you if this provision applies to your project.

5. State Lands Commission:
 - Filing fee.....\$ 25 (public agencies excepted)
 - Minimum expense deposit.....\$ 100 (public agencies excepted)

APPENDIX III

REGIONAL WATER QUALITY CONTROL BOARD POLICY FOR THE REGULATION OF DREDGE SPOIL DISPOSAL

The Regional Board's Interim Basin Plan and Resolution No. 68-32 specify the following water quality objectives pertinent to this policy which the Board intends to maintain in the San Francisco Bay Region:

- A. No significant variation in turbidity beyond present natural background levels.
- B. No bottom deposits above natural background levels.
- C. No toxic or deleterious substances present in concentrations or quantities which will cause deleterious effects on aquatic biota, wildlife, or waterfowl or which render any of these unfit for human consumption either at levels created in the receiving waters or as a result of biological concentration.

The Interim Basin Plan also states the Board's intent to prohibit the discharge of all conservative toxic and deleterious substances above those levels which can be achieved by source control to waters in the Basin; and in Resolution No. 72-15 the Regional Board adopted the following interim policy for the regulation of dredged spoil disposal:

- A. Projects involving disposal of more than 10,000 cubic yards of dredged spoil:

- 1. Any person proposing a dredging project which involves disposal of more than 10,000 cubic yards will be required to collect samples and perform sediment analyses for the following parameters:

Volatile Solids, Chemical Oxygen Demand (COD), Total Kjeldahl Nitrogen, Oil-Grease, Mercury, Lead, Zinc, Copper, Cadmium, Polychlorinated-biphenols, and Chlorinated hydrocarbon pesticides.

The Regional Board Executive Officer will specify the number, location, and depth of sediment samples and the report format.

- 2. EPA criteria and any more recent technical information will be used as guidelines to determine whether the sediments in the proposed dredging area are (a) not polluted, (b) polluted with organic matter, or (c) polluted with heavy metals, (d) if determined as polluted, the significance of the degree of pollution to the waters of the Bay, and to determine allowable dredge spoils disposal locations as follows:
 - a. If none of the allowable concentration limits of the seven criteria are exceeded, the sediment will be classed as "not polluted" and will be allowed for dumping at one of five spoil disposal sites in the Bay which are proposed by the U.S. Army Corps of Engineers. (See attached map for locations of these sites.) The Regional Board Executive Officer will specify the appropriate disposal site on a case-by-case basis.

b. If any of the allowable concentration limits of the parameters except Zinc specified in EPA criteria are exceeded, the sediment will be allowed for dumping at a land disposal site approved by the Regional Board except that spoils "polluted" with heavy metals or organic matter may be allowed for aquatic disposal at sites specified by the Regional Board on a case-by-case basis after weighing both the significance of the degree of pollution and the community values of the project, and if it can be demonstrated by the proponent to the satisfaction of the Regional Board that:

- (1) Land disposal is not feasible, and
- (2) The project is essential and must go forward, otherwise severe economic or social damage will result, and
- (3) Additional funds are not available to permit the project to proceed in compliance with the Board's Interim Policy of April 25, 1972. It is not intended that an exception be granted on this basis more than once.

3. Projects where dredge spoils contain excessive amounts of other constituents such as Copper, Cadmium, Polychlorinated-biphenols or Chlorinated hydro-carbon pesticides, etc., will be reviewed in accordance with the provisions of A.2.b. above.

B. Projects involving 10,000 cubic yards or less of dredged spoil:

1. Any person proposing a dredging project which involves disposal of less than 10,000 cubic yards of dredged spoil may be required to perform sediment analyses if the Regional Board's Executive Officer finds that the proposed dredging area is known or suspected to be highly polluted. In these cases, the same procedure as described in Section A above will be followed in processing the application for certification of the dredge project.
2. In the cases where sediment analyses are not required, the dredged spoil will be allowed for dumping at one of the five disposal sites in the Bay proposed by the U.S. Army Corps of Engineers. The Regional Board Executive Officer will specify the appropriate disposal site on a case-by-case basis.

Persons proposing a dredging project may be required to monitor the effects of the dredging and spoil operations on the beneficial water uses. Proponents will be encouraged to participate in other studies as a means of satisfying this requirement.

APPENDIX IV

ENVIRONMENTAL PROTECTION AGENCY INFORMATION, REGION IX DREDGE SPOIL DISPOSAL CRITERIA

Purpose

The Dredge Material Disposal Criteria - Revision 1 (DMDC-R1) is the Regional Office interpretation and implementation of the criteria published in the Federal Register of October 15, 1973, pursuant to Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972 (PL 92-532) for the territorial sea, contiguous zone, and ocean waters. The DSDC-R1 will also serve in the interim until guidelines are published pursuant to Section 404(b) of the Federal Water Pollution Control Act of 1972 (PL 92-500) for inland navigable waters (waters of the United States excluding the territorial sea).

The DSDC-R1 will be used in the evaluation of (1) applications for Corps of Engineers permits pursuant to Section 103(a) MPRSA72 and Section 404(a) FWPCA72 and (2) Corps of Engineers projects for new and maintenance dredging.

Dredge Material Classification and Site Criteria

A. Criteria for Open Water Sites

1. Dredge material will be considered unpolluted and will be acceptable for disposal at any of the established disposal sites and at any other site, determined by Region IX on a case-by-case basis, provided that the dredge material complies with the following condition.
 - a. The dredge material is composed of essentially sand and/or gravel or of any other naturally occurring sedimentary materials with particle sizes larger than silts and clays, generally found in inlet channels, ocean bars, ocean entrance channels to sounds and estuaries, and other areas of normally high wave energy such as predominate at open coastlines. Dredge material, having an analysis whereby 91% or greater of the material is retained on a Standard U.S. Sieve Size No. 200, shall be considered unpolluted.
 - b. Unpolluted Dredge Material - Bottom Sediment Criteria

<u>Pollutant</u>	<u>Maximum Material Concentration, ppm</u>
Mercury	1.2
Cadmium	2.3
Lead	75
Zinc	190
Oil and grease	1900

2. Polluted Dredge Material - Bottom Sediment Criteria

<u>Pollutant</u>	<u>Maximum Material Concentration, ppm</u>
Mercury	1.7
Cadmium	3.2
Lead	110
Zinc	250
Oil and grease	2800

3. Heavily Polluted Dredge Material - Bottom Sediment Criteria

In cases where dredge material exceeds the criteria in A.1-A.2 above, disposal at a 100-fathom site will be decided on a case-by-case basis.

B. Criteria For Land Disposal

1. The dredge material shall comply with the unpolluted dredge material criteria where the site may be subject to erosion or wave action, with the resultant return of material to the water.
2. If there is no return flow from a land disposal site, there is no restriction. If there is a return flow, the maximum discharge shall be 1.0 ml/l/hr settleable solids or less if required by State or local agencies.

C. Criteria for Beach Replenishment

1. The dredge material shall comply with Section A.1. above; or
2. Both the dredge material and the beach disposal site shall be sampled in accordance with Section E.1 below. Section A.1.b shall apply and the average percentage of material retained on a Standard U.S. Sieve Size No. 200 shall equal or exceed the average retained on a Standard U.S. Sieve Size No. 200 for beach material core samples. The beach material core samples shall be at least three (3) feet in depth unless bed-rock or other destruction limits the sand depth.

D. Criteria for Backfilling with Dredge Material

1. This section applies to the dredging of material from an area and the use of the resulting dredge material for back-filling in the area from which the dredge material is obtained.
2. Dredge material shall comply with Section A.1.
3. The Area to be dredged shall be sampled in accord with Section E.1., below.

E. Other Provisions

1. Sampling and Analysis Requirements for Dredge Material Disposal.

a. Number and location of Core Samples to be taken.

For all projects, the number and location of core samples to be taken must be approved by Regional Office personnel on a case-by-case basis. This approval will normally be obtained after a meeting of the applicant or his representatives with the Regional Office personnel.

The following formula will be used to determine the number of cores to be obtained:

$$\text{Number of cores to be obtained} = \frac{\sqrt{A}}{50}, \text{ where } A = \text{areas to be dredged (sq. yards)}$$

Each Cores should be located so as to provide representative sampling of the dredge material.

Pollution sources, irregularity of area to be dredged, and past sediment data may necessitate an increase in the number of core samples required.

b. Number of Analyses per Core.

Each core to be analyzed shall be taken from the surface to project depth. Each core shall then be divided into 3-foot segments, beginning with the surface segment. After division into 3-foot segments, if the remainder at the bottom is 1-1/2 feet or greater, it will be considered as an additional segment. If the remainder is less than 1-1/2 feet, it may be combined with the last 3-foot segment.

c. Analyses to be Performed.

1. Substantially Sand

For those materials which the applicant believes are substantially sand, only size distribution data are required. One analysis shall be performed for each core using a homogenized sample taken from surface to project depth. In the event that the material is not found to be substantially sand, the analyses indicated below are required.

2. Open Water Disposal.

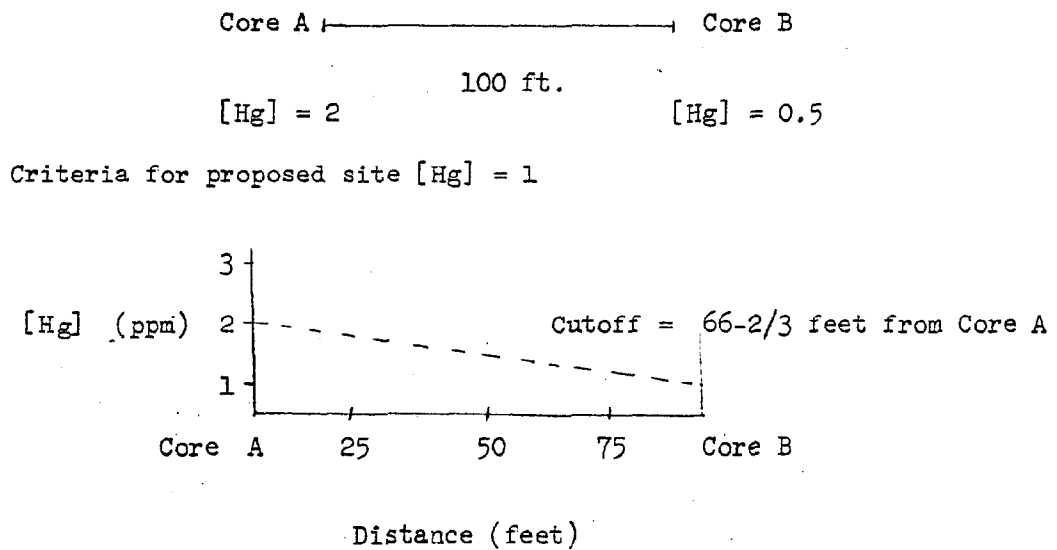
The following bottom sediment analyses (dry weight basis are required):

Mercury	Lead	Oil and Grease
Cadmium	Zinc	

3. Analysis of Data.

The criteria for dredge material apply to the value obtained by averaging analyses for any continuous six feet of core or to any core having a total depth less than six feet. Where the value obtained exceeds the criteria for the proposed site, disposal of the material which exceeds the criteria shall be at an alternate site, in compliance with applicable site criteria.

The volume of dredge material that must be disposed of at alternate sites will be determined by interpolating horizontally between the polluted core and nearest unpolluted cores.



4. Additional requirements and monitoring may be specified to assure compliance with water quality standards, protection of beneficial uses, or the protection of wetlands at any proposed disposal site.
5. Sampling and analyses shall be in accord with procedures and methods described in "Preliminary Sampling and Analytical Procedures for Evaluating the Disposal of Dredged Material," EPA, Region IX, dated April, 1974, or by other procedures or methods for which written concurrence has been obtained from Environmental Protection Agency, Enforcement Division, 100 California Street, San Francisco, California, 94111. Telephone inquiries, on the subject of analytical methods, should be directed to the Laboratory Support Branch of the Surveillance and Analysis Division, Region IX (Telephone No. (415) 273-7502).

F. Dredge Material Disposal Sites

The description, location, criteria, and special conditions for each site are presented in the attached list. The use of a disposal site shall only be in compliance with the applicable criteria.

An applicant proposing a dredge spoil disposal site not herein listed shall be required to prepare an acceptable environmental assessment of the proposed disposal.

Questions, concerning application or interpretation of the DSDC-R1, should be directed to: Permits Branch of the Enforcement Division (Telephone No. (415) 556-3454).

DREDGE SPOIL DISPOSAL SITES

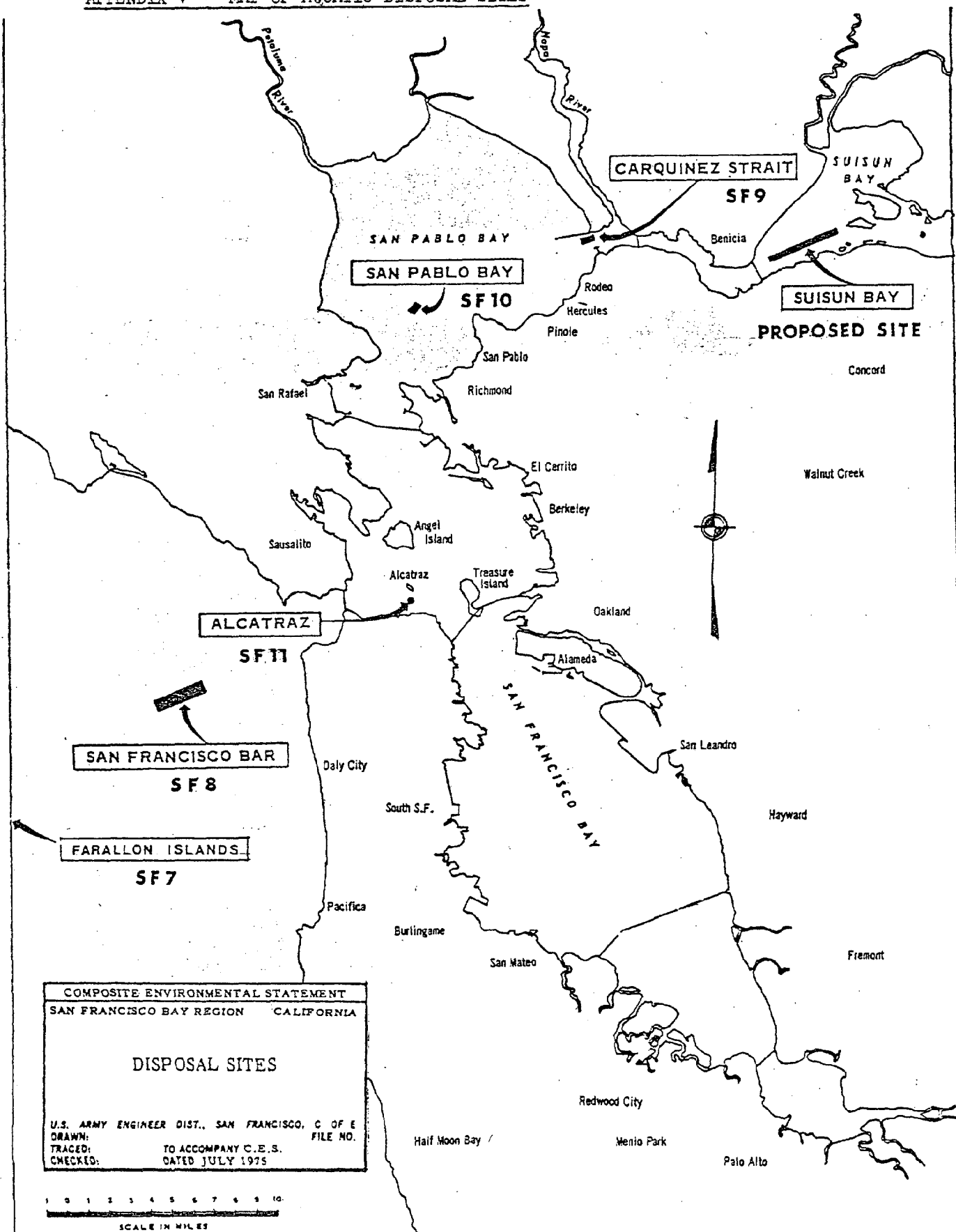
San Francisco District
Corps of Engineers

- SF 7. Farallon Islands - 100 Fathom 37°31'45"N, 122°35'45"W
Distance: 29.6 nautical miles from Golden Gate
Depth: 100 fathoms
Size: 1000 Yard radius
Criteria: A.3
- SF 8. San Francisco Channel Bar 37°45'06"N, 122°35'45"W
Distance: 2.8 nautical miles from shore
Depth: 35 to 46 feet, average 40
Size: about 2 square miles (5000 x 100 yards, 2500 yards south of and parallel to channel).
Criteria: A.1.a
- SF 9. Carquinez Straits 38°03'50"N, 122°15'55"W
Distance: 0.8 nautical miles from Mare Island Straits entrance
Depth: 28 to 56 ft., average 42 feet
Size: rectangle 1000 x 2000 ft., long axis bearing 80° true
Criteria: A.1 (Note: Site should be used only during the months of Dec., Jan., Feb. Use of the site at other times will require justification; approval may be subject to provisions in the permit which require monitoring and other conditions)
- SF 10. San Pablo Bay 38°00'28"N, 122°24'55"W
Distance: 2.6 nautical miles NE of Pt. San Pedro at Black and White Marker Buoy
Depth: 38 to 40 ft. average 39 feet
Size: rectangle 1500 x 3000 ft., long axis bearing 50° true
Criteria: A.1

SF 11. Alcatraz Island 37°49'17"N, 122°25'23"W
Distance: About 0.3 nautical miles of Alcatraz
Island
Depth: 95 to 160 ft., average 130 feet
Size: radius of 1000 ft.
Criteria: A.1

SF 16. Suisun Bay 38°03'05"N, 122°05'35"W
Distance: 0.2 nautical miles from nearest shore
Depth: 30 feet
Size: Rectangle 500' by 12,000'; long axis
bearing 62° East of True North
Criteria: A.1

APPENDIX V -- MAP OF AQUATIC DISPOSAL SITES



APPENDIX VI
FORM FOR SEDIMENT ANALYSIS DATA

Contaminant: _____

Columns	1	2	3	4	5
	Sample No.	Concentration (c)(ppm) or or percent retained on #200 seive.	Depth (Δd)(ft)	$C \times \Delta d$	$x = \frac{\sum (cx \Delta d)}{\sum d}$
Core 1					
Core 2					
Core 3					
Core 4					
Core 5					

*Use at least one page for each contaminant

In Column 1: Write the sample number.

In Column 2: Write the concentration of the contaminant in parts per million.

In Column 3: Write the depth. Use three foot intervals. If the remainder at the bottom is 1-1/2 ft. or greater, it will be considered as an additional segment. If the remainder is less than 1-1/2 ft., it may be combined with the last 3 ft. segment.

In Column 4: Multiply column 2 by column 3 of each depth.

Column 5: Depth weighted average for the core. Add column 4 and divide by the sum of column 3.

For substantially sand -- complete columns 1 and 2 only.

APPENDIX VII

QUESTIONNAIRE

Coordinator Permit No. _____
(if known)

NAME AND ADDRESS _____

PROJECT _____

DATE OF COMMENT _____

Your comments regarding dredging permit processing are encouraged. You should make your comments directly to the permit coordinator by mail (using this form) or by telephone at (415) 557-1860

1. IS THE COMMON APPLICATION FORM HELPFUL TO YOU? WHAT AREAS SHOULD IT COVER MORE THOROUGHLY? HOW CAN IT BE IMPROVED? PLEASE EXPLAIN.

2. DO YOU FEEL THAT THE PERMIT PROCESS: (a) MOVES VERY FAST IN TERMS OF RESULTS _____
(b) MOVES AS FAST AS CAN BE EXPECTED _____

(c) IMPROVEMENT NEEDED IN WHAT AREAS _____

IN YOUR OPINION HOW CAN IT BE IMPROVED _____

3. DO YOU FIND THE PERMIT COORDINATOR HELPFUL? HOW WOULD YOU IMPROVE PERMIT PROCESSING COORDINATION? _____

4. ADDITIONAL REMARKS. _____

(PLEASE USE ADDITIONAL PAPER IF NEEDED - WE APPRECIATE YOUR INTEREST)

APPENDIX G
APPLICATION FOR DREDGING PERMIT

TO BE FILLED IN BY PERMIT COORDINATOR

1. Application Number: _____
2. Date Application Received: _____
3. Updated Since: _____
4. Agency Application Number: _____
5. Corps Public Notice Number: _____

APPLICATION FOR DREDGING PERMIT OR CERTIFICATION FOR ALL
MAINTENANCE DREDGING AND ANY NEW DREDGING OF LESS THAN 100,000 CUBIC YARDS

I. APPLICANT INFORMATION (refer to page 2 in brochure)

A. OWNER

1. Owner's Name: _____
Owner's Representative (if any): _____
2. Owner's Address: _____
Representative's Address: _____
3. Owner's Telephone Number: _____ Representative's: _____

B. APPLICANT

4. Applicant's Name (if different than Owner): _____
Applicant's Representative (if any): _____
5. Applicant's Address: _____
Representative Address: _____
6. Applicant's Telephone Number: _____ Representative's: _____

C. CERTIFICATE OF APPLICANT

I certify that the information in this application and all accompanying exhibits is full, complete, and correct, and understand that misstatement or omission of such information, whether unintentional or not, shall be grounds for suspension or revocation of the permit.

SIGNATURE OF APPLICANT
(or representative): _____

Date of
Signature: _____

NOTE: If signer is applicant's representative, evidence that the signer may bind the applicant must be included in this application. (Refer to page 3 of the brochure.)

If applicant is not the owner, evidence that the applicant may bind the owner must be included in this application. (Refer to page 3 of the brochure.)

II. PROJECT INFORMATION

A. GENERAL

1. Project Name: _____
2. Brief Description of Work: _____

3. Brief Statement of Purpose of Dredging: _____

B. LOCATION

1. County(ies): _____
2. City(ies) if any (if unincorporated, name of community or other general area): _____

3. Name of waterway at location: _____
4. Assessor's parcel number or other brief legal description if property is not defined as such: _____

5. The names, addresses, and phone numbers of adjacent property owners or residents are:
NORTH: _____
SOUTH: _____
EAST: _____
WEST: _____
6. Does the work fall within the boundaries of BCDC as set forth in the McAteer-Petris Act, Gov. C. Sec. 66610? _____

C. OWNERSHIP

1. Is the property involved in this application in common ownership with any adjacent or nearby property? _____. If so, do you intend to apply for a dredging permit for work on such property within the next twelve months? ____.
2. The project site is _____ owned in fee by the applicant _____ subject to SLC lease _____ grant lands subject to public trust.
3. Is a lease or permit required from SLC? _____

D. SCOPE

1. The work involves dredging _____ cubic yards of material and depositing _____ cubic yards of spoil at _____.
2. The work (other than dredge spoils) involves placing _____ cubic yards of fill over _____ square feet of surface area, or placing _____ square feet of structure on _____ pilings or cantilevered over _____ square feet of Bay surface area and/or _____ square feet of a marsh, and/or _____ square feet of a salt pond, and/or _____ square feet of a managed wetland, and/or _____ square feet of a certain waterway.
3. The work does/does not involve placing fill, grading, constructing structures, utilities, or other activity within 100 feet inland of the line of highest tidal action.
4. The work would cost approximately _____ and would be started on _____ and completed on _____.
5. Is any portion of the activity for which authorization is sought now complete? Yes _____ No _____. If answer is "yes" give reasons and brief description _____

Month and year the activity was completed _____
Indicate location of completed work on the drawings. _____

E. TYPE OF DREDGING

1. New Dredging (any dredging other than maintenance dredging).

The work does/does not include new dredging. It is expected that further new dredging of _____ cubic yards of material will be required in the year _____. Maintenance dredging of _____ cubic yards will be required every _____ years.

2. Maintenance Dredging. ("Maintenance dredging" means any dredging in San Francisco Bay to (a) restore water depths authorized by the COE prior to September 17, 1965, (b) restore water depths that existed at a facility on or after September 17, 1965, or (c) restore water depths authorized by BCDC on or after September 17, 1965.)

The project does/does not include maintenance dredging. The last time the area was dredged was in _____ when _____ cubic yards of material was removed. It is expected that maintenance dredging will again be required in the year _____.

F. EQUIPMENT

The following equipment will be used: _____ Clamshell dredge; _____ hydraulic dredge; _____ Barge (specify type and size).

G. DISPOSAL

1. General. Indicate the approximate quantities of spoils in cubic yards which will be deposited at each of the following locations:

AMOUNTS

- a. _____ a dry land location outside BCDC jurisdiction.
b. _____ a dry land location within BCDC jurisdiction.
c. _____ a BCDC approved fill project.
d. _____ an ocean dumping site approved by EPA.
e. _____ an U. S. Army Corps of Engineers designated dumping site in the Bay.
f. _____ other (please specify) _____.

If "e" above applies, briefly explain why no other alternative dumping site is feasible and briefly describe what investigations were made to find other feasible sites: _____

2. Land Disposal Only

- a. The fill will be _____ unconditioned _____ conditioned.
b. There will/will not be a return flow.
c. Owner of disposal site _____.

III. PROCESSING (refer to page 3 in the brochure)

A. APPROVAL BY LOCAL AGENCIES

State the approving agencies, types and dates of each local approval that (a) is required, and (b) has been obtained and/or (c) has been applied for, including, but not limited to rezoning, subdivision, FUD, engineering, utilities and/or review by planning commissions, or departments, port authorities, special committees, boards of supervisors or city councils, or regional bodies. Indicate the name of the local person knowledgeable about the approval.

Approving Agency	Type of Approval	Date of Application	Date of Approval	Knowledgeable Person (Phone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

If any city or county having jurisdiction does not require any approvals, attach a written communication from the city or county so stating (see Section IV. below).

B. PRIOR AGENCY CONTACT

Contact was made with:

RWQCB

(Date of first contact) (person contacted) (Date Permit issued or approval granted)

BCDC

SLC

(Date of first contact)	(person contacted)	(Date Permit issued or approval granted)

COE

EPA

C. SUBMISSION TO COE

Please do ☐ do not ☐ submit this application to the Corps of Engineers for Federal processing. (If you check the "do" box, the Coordinator will give you an application form for use by federal agencies. Submit the federal form to the Coordinator, who will send it to the Corps for you. If you check the "do not" box, you must obtain this additional form from the Corps yourself. In any case, you must get permission from the Corps to carry out your project.)

PLEASE NOTE: THE INFORMATION ON THE FOLLOWING PAGE IS VERY IMPORTANT. PLEASE READ CAREFULLY BEFORE SUBMITTING YOUR APPLICATION.

IV. ATTACHMENTS TO THE APPLICATION. Attach the following to your application:

1. NARRATIVE DESCRIPTION OF THE PROJECT--This description should be complete, but brief since it will be used to describe your project in various notices. (See page 2 of brochure for description.)
2. LOCAL REPORT--Statement of decisions on your project by local agencies, or statements by local agencies that no decision is necessary. (See page 3 of brochure for description.)
3. OWNERSHIP--applies to both dredging and disposal sites. Evidence that site is owned by applicant or that applicant has a leasehold interest in the site. (See page 3 of brochure for description.)
4. BIRTH CERTIFICATE OR CORPORATE CERTIFICATION--Required by State Lands Commission for projects on properties in which State Lands has an interest unless applicant is a public agency, or document is already on file in SLC office. (See page 4 of brochure for description.)
5. DRAWINGS--Site plans, typical sections, and location maps. (See page 4 of brochure for description and example.)
6. ENVIRONMENTAL DOCUMENT--Report by a lead agency regarding impact of project on environment or statement by agency that project is exempt from requirement to prepare such report. (See page 5 of brochure for description.)
7. FEES--Separate checks payable to each agency in accordance with the schedule shown in Appendix I on page 14 of the brochure.
8. SEDIMENT ANALYSIS--Provides a means of assessing the levels of contamination which may be present at your site. Use the form provided on page 25 of the information brochure; one sheet for each contaminant.

V. REMARKS

APPENDIX H
DREDGING APPLICATION PROCESS RECORDS

Agency Response for Application Completeness

File No. D-75-1
 Project Name S. F. Port Commission
 Date Submitted Feb. 21, 1975
 Quantity (C.Y.) 500,000
 Disposal Site Alcatraz

- ☐ New Dredging
☒ Maint. Dredging

* Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

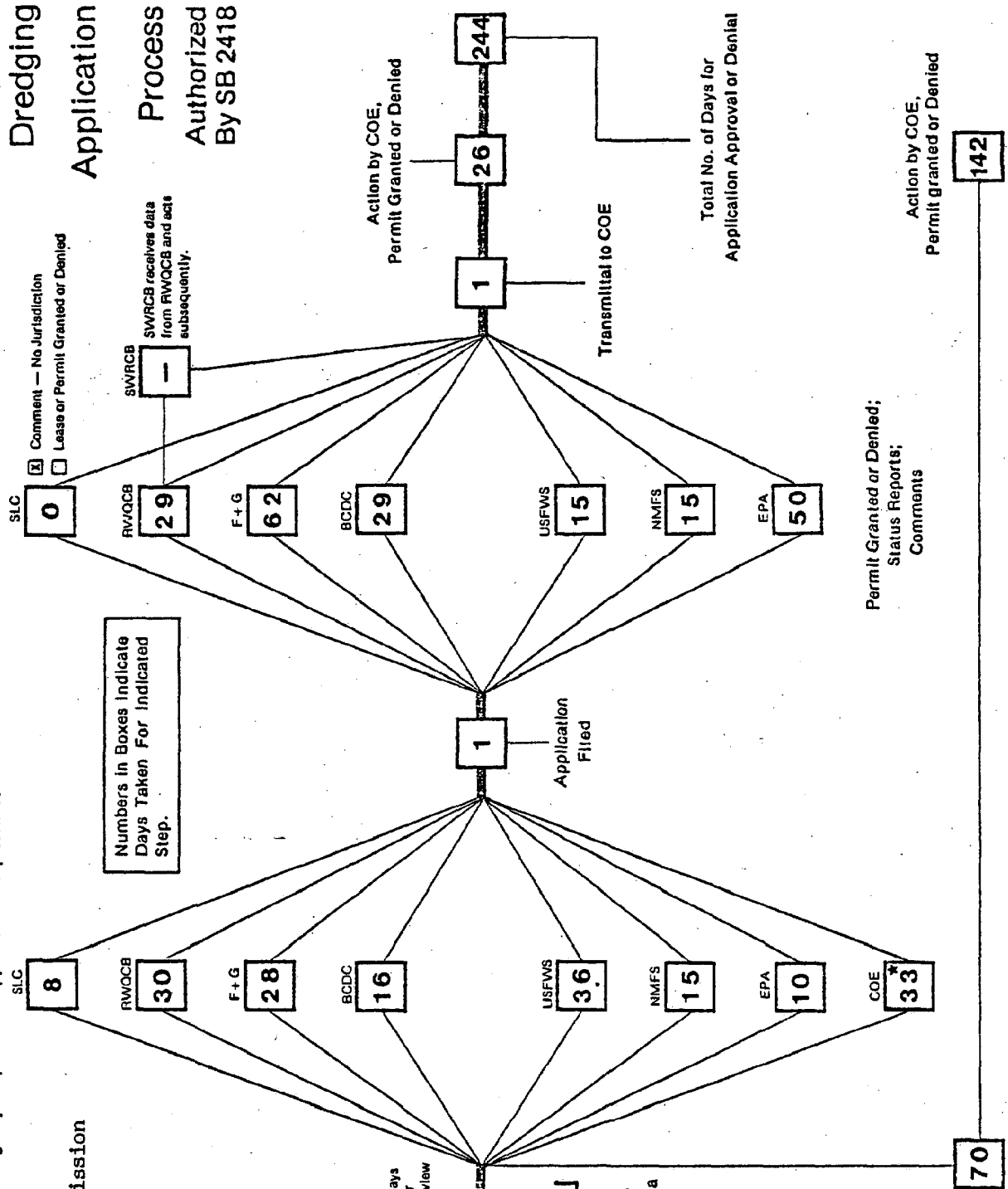
No. of times
 Application Submitted → 3 9 32

No. of days actual review

Permit Coordinator Reviews
 Application for Required Data

Resources Agency mailed
 State comments 48 days
 after Public Notice issued.

COE Issues Public Notice



Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-2
 Project Name Marina Vista
 Date Submitted March 5, 1975
 Quantity (C.Y.) 8,000
 Disposal Site Land

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Total no. of days
 needed for
 application review

No. of times

Application
 Submitted

1

2

2

No. of days actual review

Permit Coordinator Reviews
 Application for Required Data

SLC ☒ Comment — No Jurisdiction
☐ Lease or Permit Granted or Denied

0

Numbers in Boxes Indicate
 Days Taken For Indicated
 Step.

RWQCB

110

SWRCB

109

SWRCB receives data
 from RWQCB and acts
 subsequently.

F+G

27

BCDC

41

USFWS

67

NMFS

33

EPA

76

SLC

19

RWQCB

19

F+G

14

BCDC

6

USFWS

7

NMFS

5

EPA

10

Permit Granted or Denied;
 Status Reports;
 Comments

COE

17

Action by COE,
 Permit Granted or Denied

0

40

173

Transmittal to COE

Total No. of Days for
 Application Approval or Denial

Action by COE,
 Permit granted or Denied

90

Resources Agency mailed
 State comments 51 days
 after Public Notice issued.

COE Issues Public Notice

81

Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-3
 Project Name Smith-Rice Co.
 Date Submitted March 6, 1975
 Quantity (C.Y.) 5,000
 Disposal Site Alcatraz

☒ New Dredging
☐ Maint. Dredging

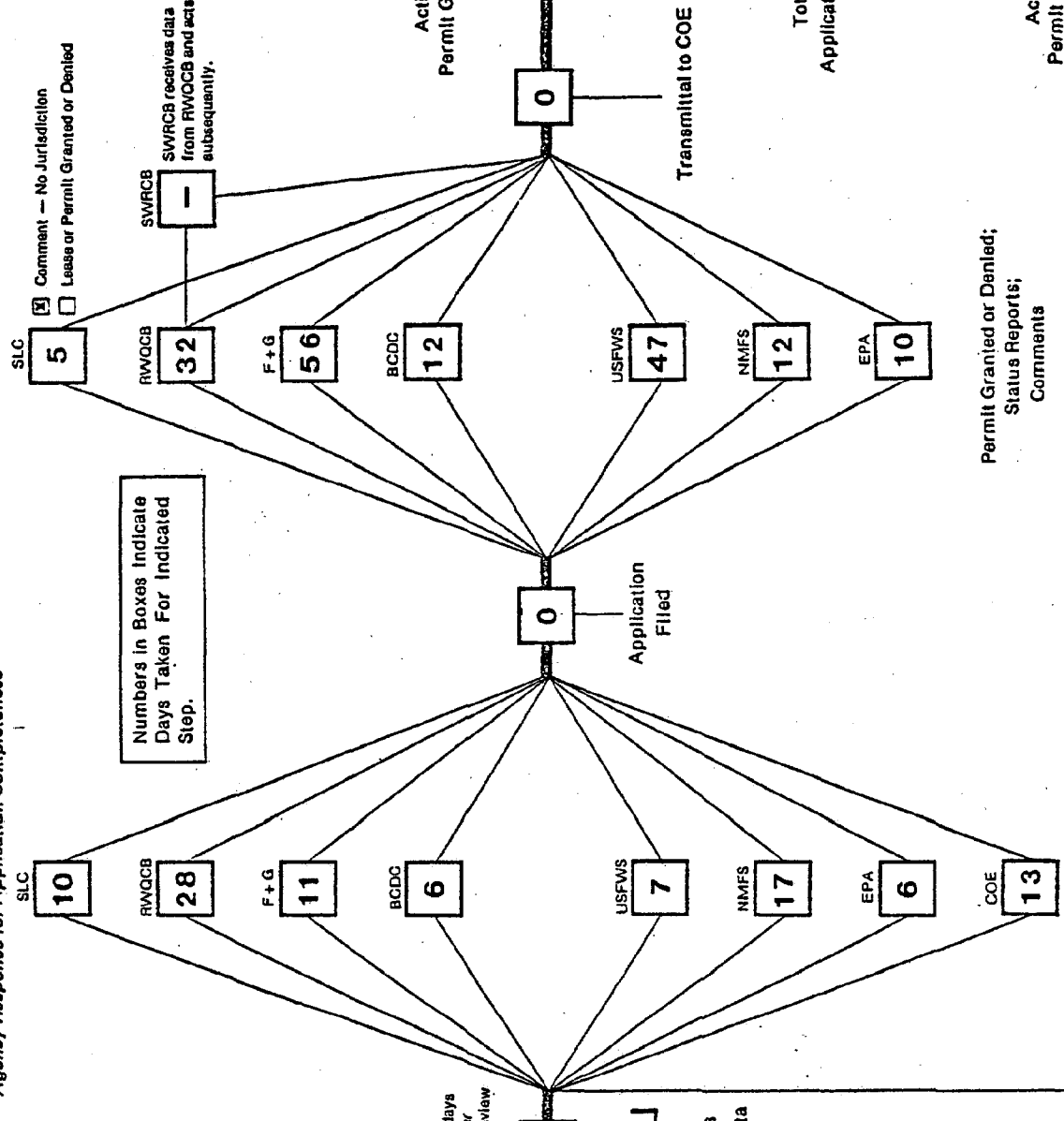
★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

No. of times
 Application Submitted → **2**
 Total no. of days
 needed for
 application review **9**
 No. of days actual review **15**

Permit Coordinator Reviews
 Application for Required Data

Resources Agency mailed
 State comments 36 days
 after Public Notice issued.

COE Issues Public Notice



Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-4
 Project Name Basalt Rock Co.
 Date Submitted March 24, 1975
 Quantity (C.Y.) 10,000
 Disposal Site Alcatraz

☐ New Dredging
☒ Maint. Dredging

★ indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

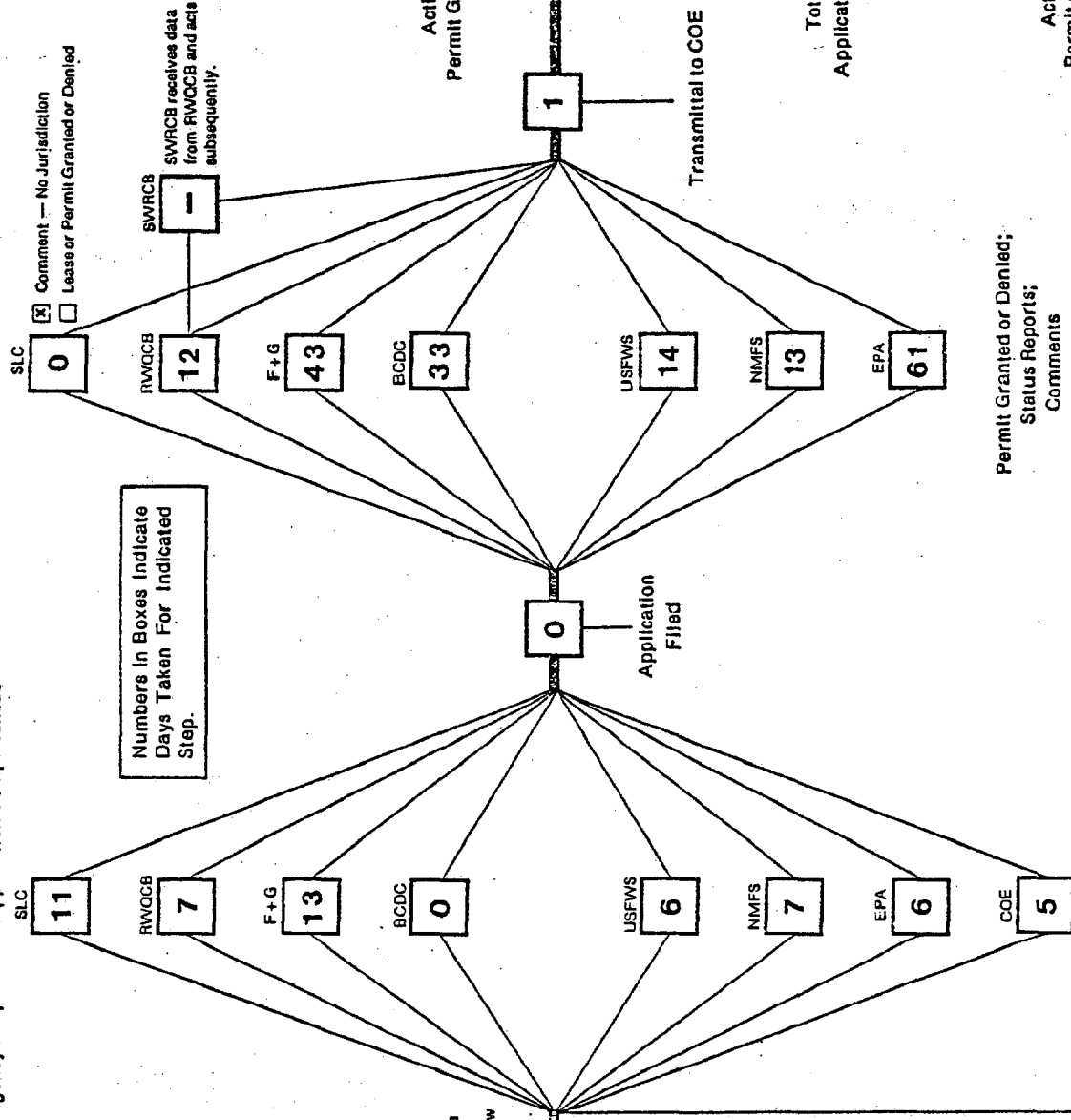
Total no. of days
 needed for
 application review

Application
 Submitted → 3 21 53

No. of days actual review

Permit Coordinator Reviews
 Application for Required Data

Resources Agency mailed
 State comments 62 days
 after Public Notice issued.



Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-5
 Project Name Standard Oil Co.
 Date Submitted April 8, 1975
 Quantity (C.Y.) 2,300
 Disposal Site Alcatraz

☐ New Dredging
☒ Maint. Dredging

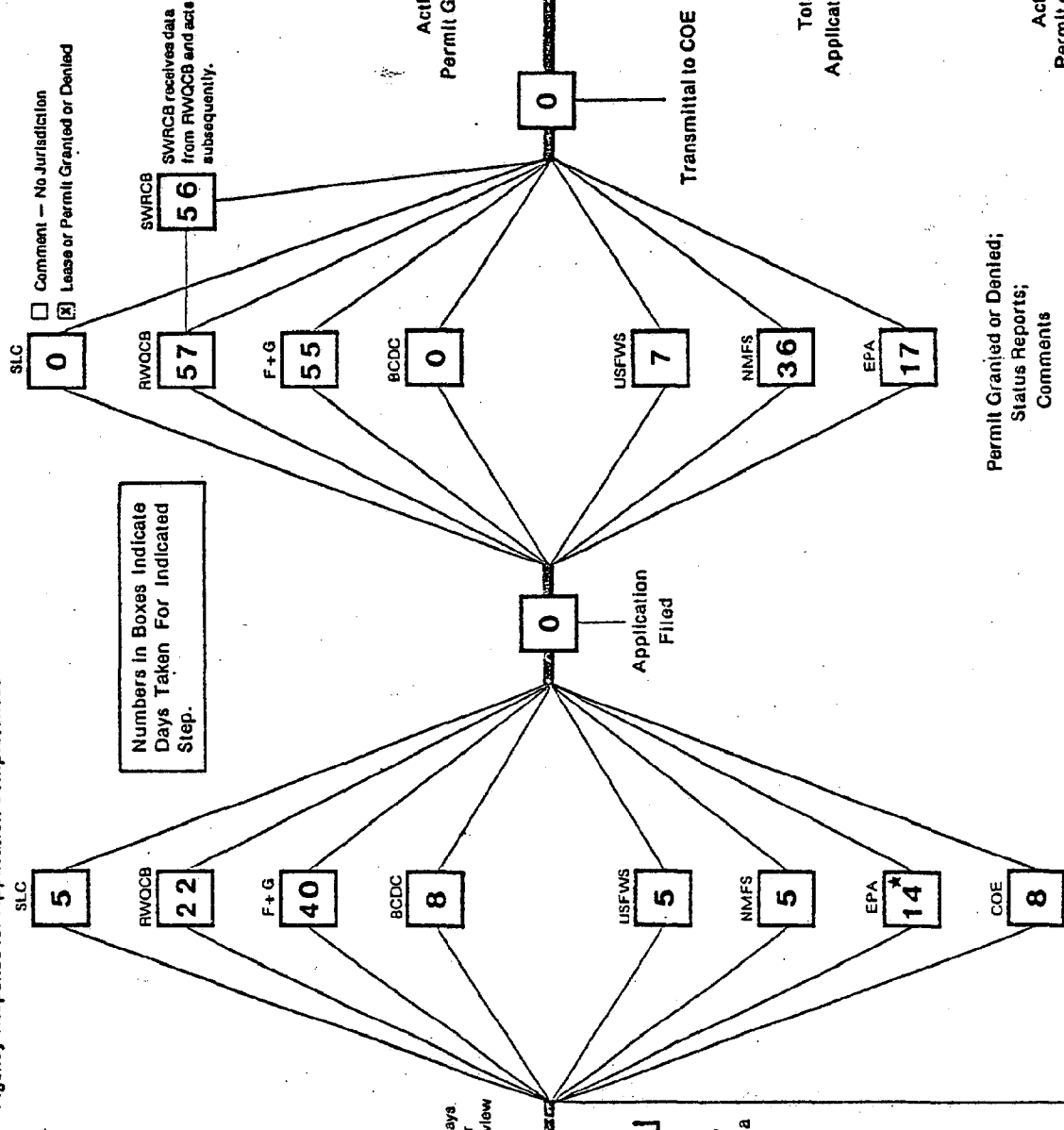
* Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Total no. of days
 needed for
 application review

Application
 Submitted 3 13 22

No. of days actual review

Permit Coordinator Reviews
 Application for Required Data



Resources Agency mailed
 State comments 48 days
 after Public Notice issued.

COE Issues Public Notice

Dredging Application Process Authorized By SB 2418

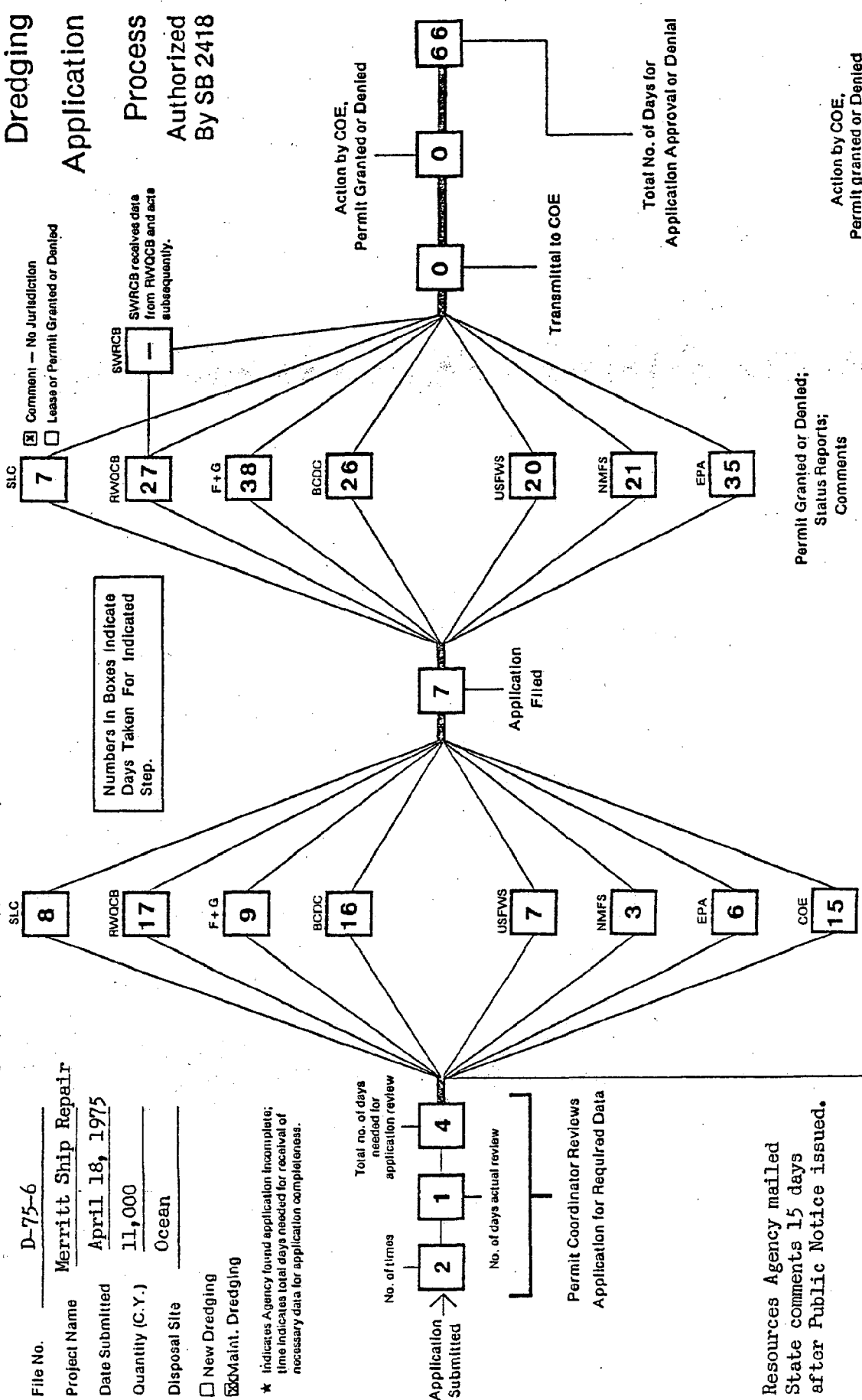
Agency Response for Application Completeness

File No. D-75-6
 Project Name Merritt Ship Repair
 Date Submitted April 18, 1975
 Quantity (C.Y.) 11,000
 Disposal Site Ocean

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete; time indicates total days needed for receipt of necessary data for application completeness.

Numbers In Boxes Indicate Days Taken For Indicated Step.



Resources Agency mailed State comments 15 days after Public Notice issued.

Agency Response for Application Completeness

File No. D-75-7
 Project Name Parr-Richmond Terminal
 Date Submitted April 25, 1975
 Quantity (C.Y.) 18,000
 Disposal Site Alcatraz

- ☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete; time indicates total days needed for receipt of necessary data for application completeness.

Total no. of days needed for application review

Application Submitted → 3 11 11

No. of times

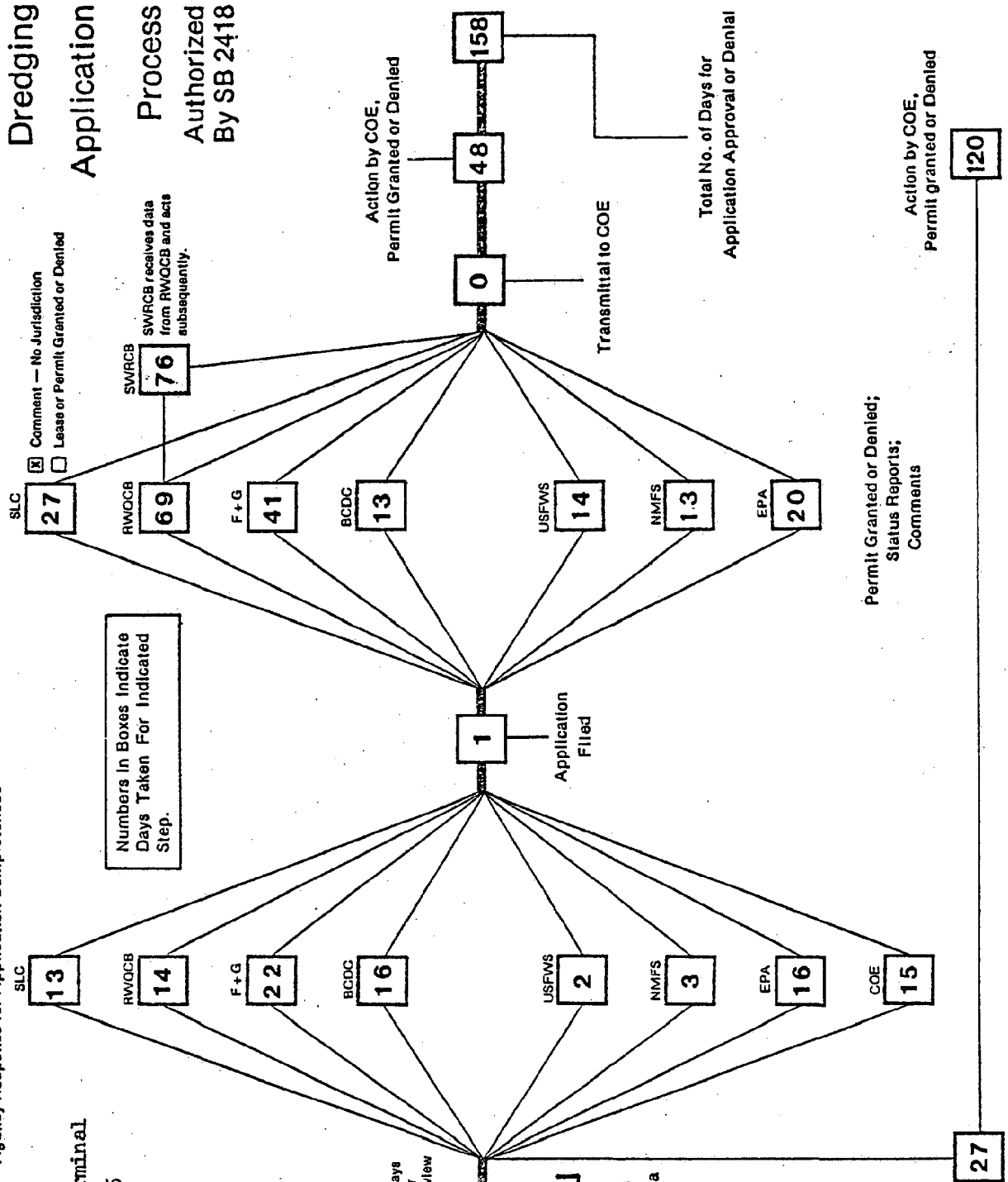
No. of days actual review

Permit Coordinator Reviews Application for Required Data

Resources Agency mailed State comments 85 days after Public Notice issued.

COE Issues Public Notice

Dredging Application Process Authorized By SB 2418



Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-8
 Project Name City of Richmond
 Date Submitted April 14, 1975
 Quantity (C.Y.) 16,000
 Disposal Site Alcatraz

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Total no. of days
 needed for
 application review

No. of times

31 Application
 Submitted

3

24

86

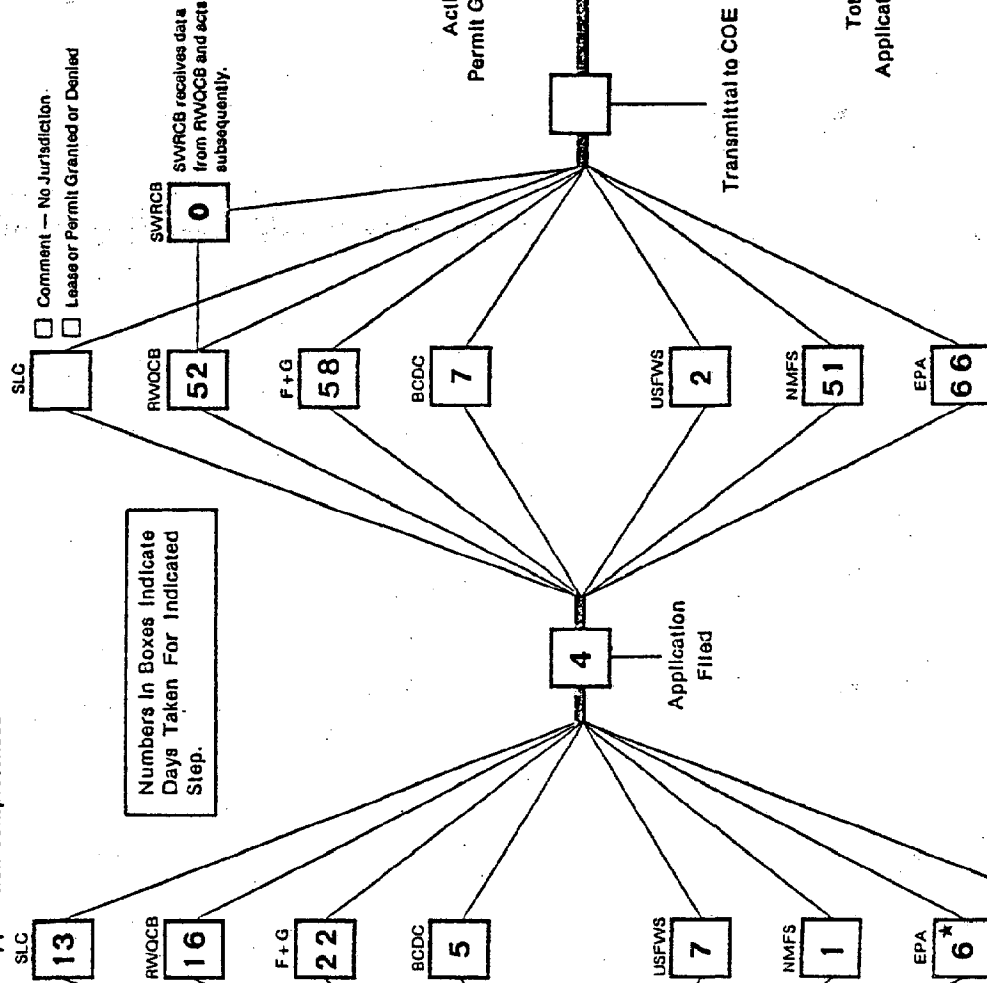
No. of days actual review

Permit Coordinator Reviews
 Application for Required Data

Resources Agency mailed
 State comments 32 days
 after Public Notice issued.

COE Issues Public Notice

12



Numbers in Boxes Indicate
 Days Taken For Indicated
 Step.

Permit Granted or Denied;
 Status Reports;
 Comments

Action by COE.
 Permit granted or Denied

Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-9
 Project Name Standard Oil Co.
 Date Submitted May 2, 1975
 Quantity (C.Y.) 84,000
 Disposal Site Alcatraz

☐ New Dredging
☒ Maint. Dredging

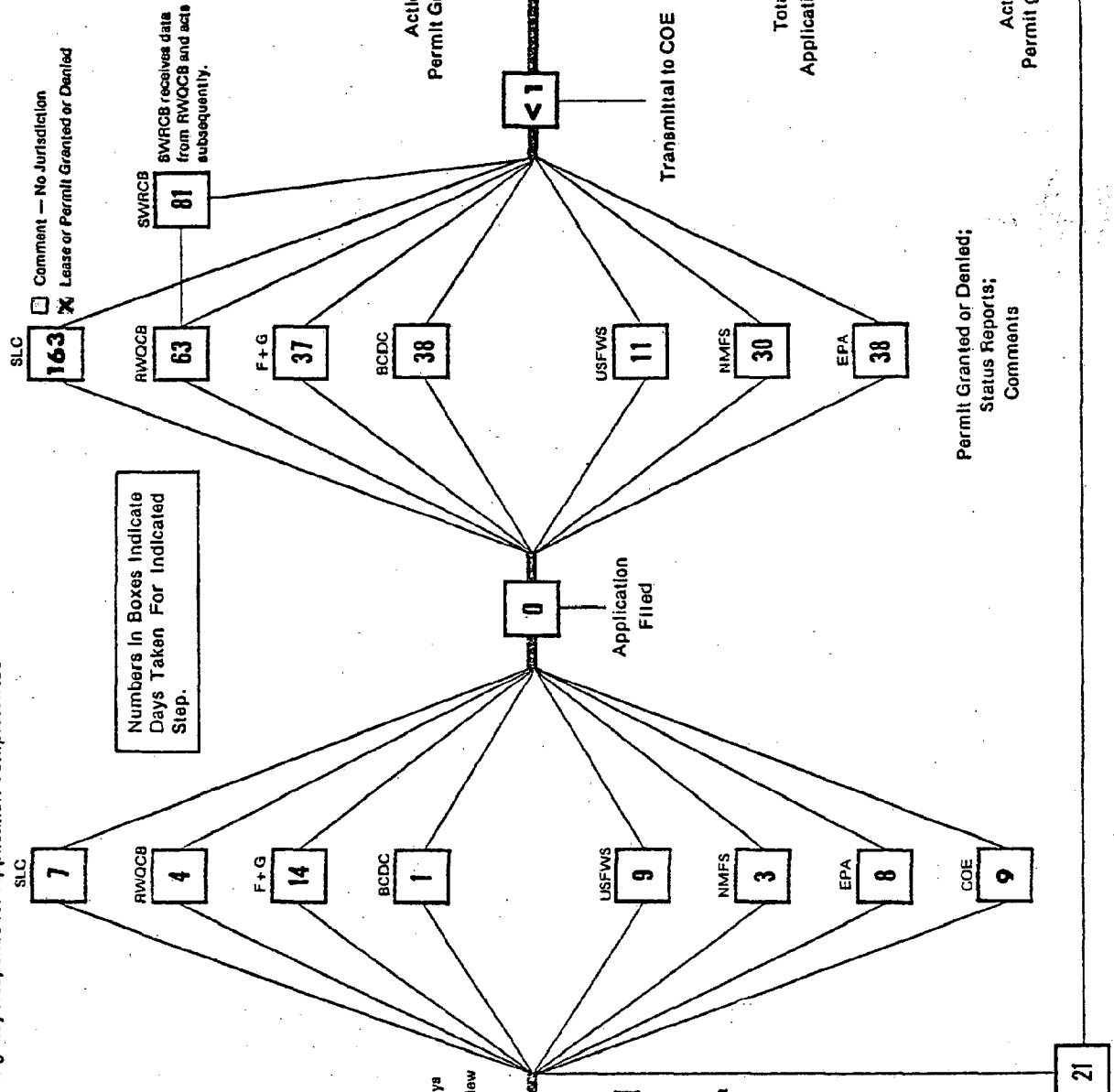
* Indicates Agency found application incomplete; time indicates total days needed for receipt of necessary data for application completeness.

Application Submitted → 2 No. of times
 Total no. of days needed for application review 18
 No. of days actual review

Permit Coordinator Reviews Application for Required Data

Resources Agency mailed State comments 36 days after Public Notice issued.

COE Issues Public Notice

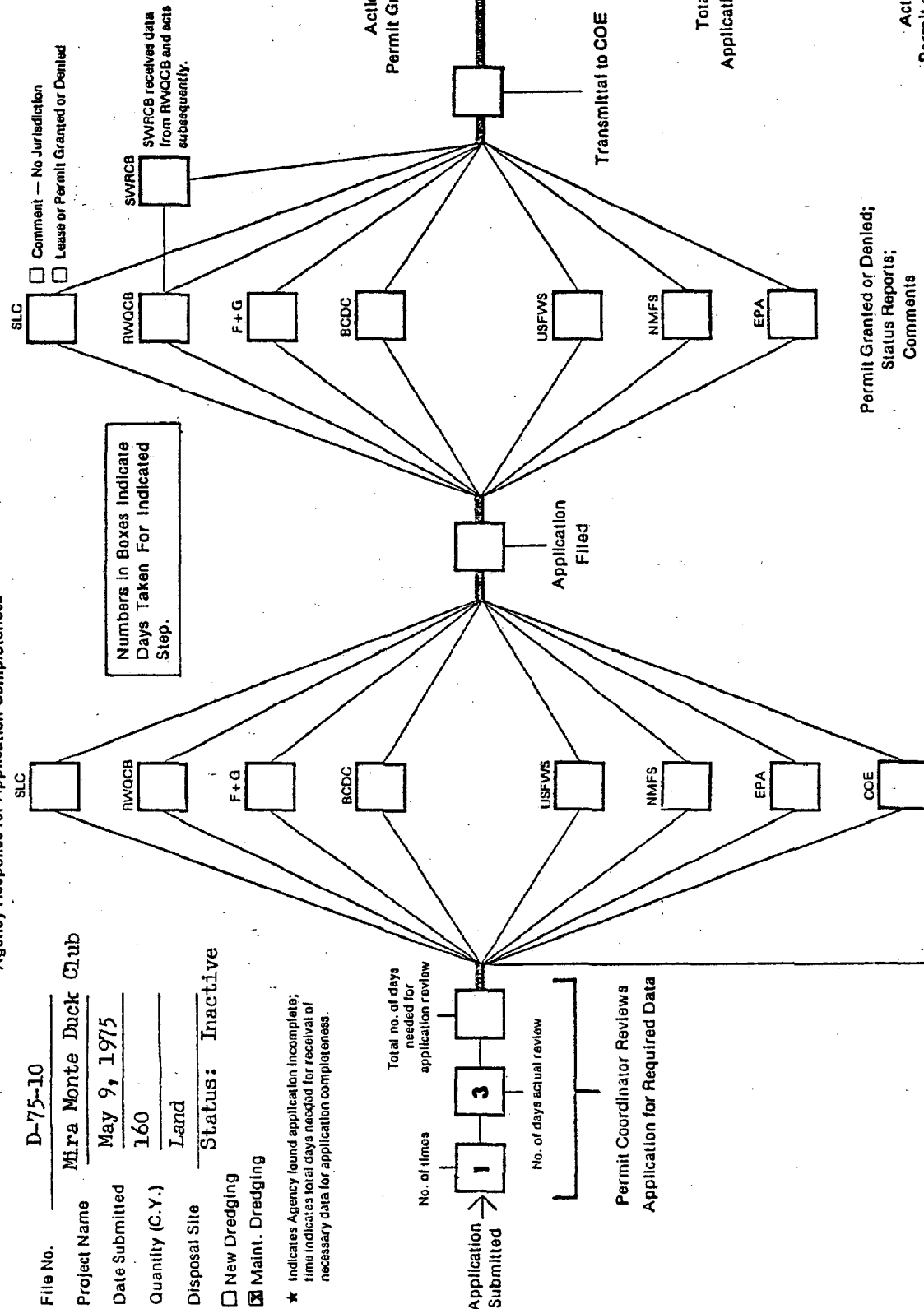


Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-10
 Project Name Mira Monte Duck Club
 Date Submitted May 9, 1975
 Quantity (C.Y.) 160
 Disposal Site Land
 Status: Inactive
☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.



Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

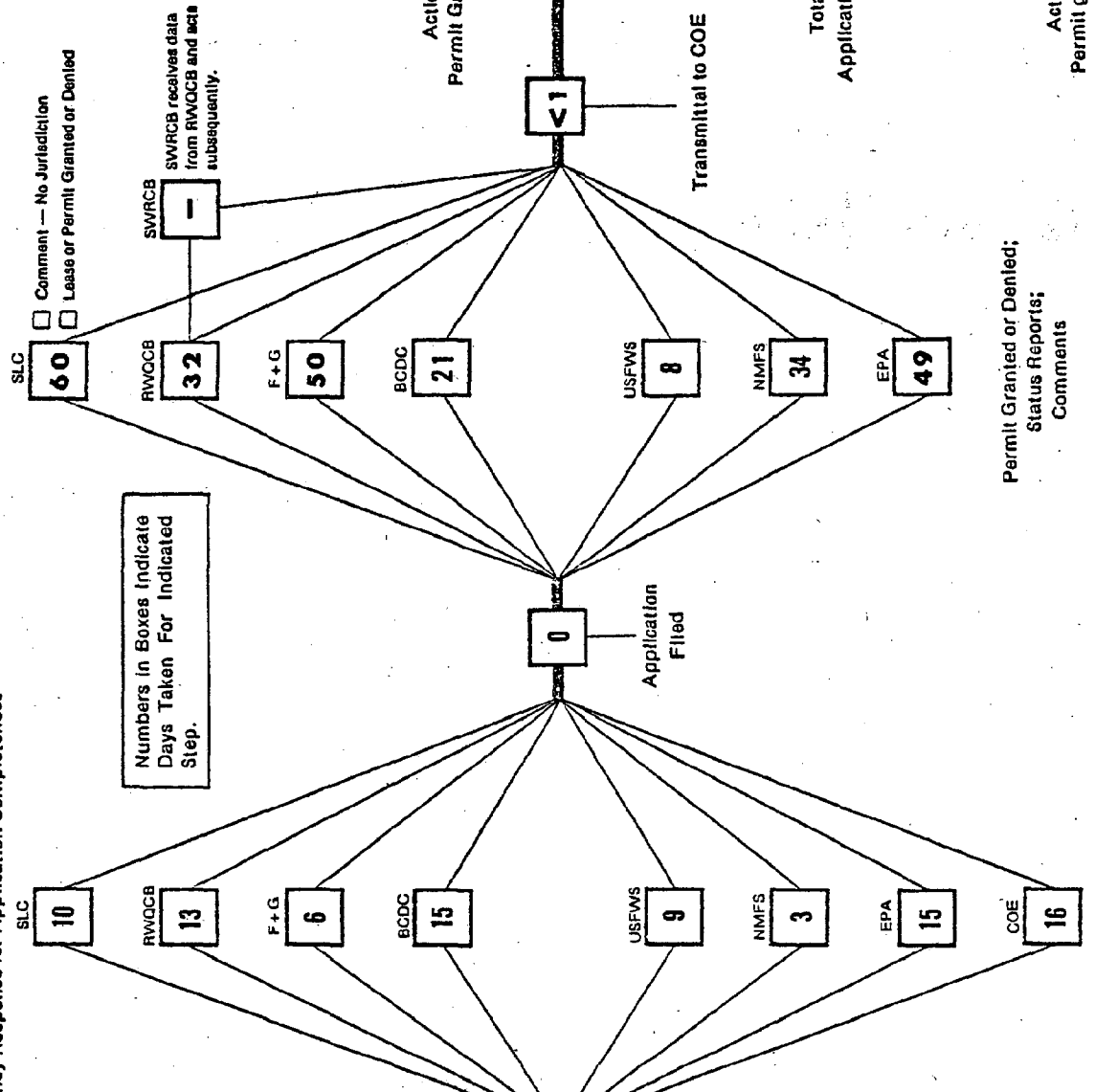
File No. D-75-11
 Project Name Levin Metals Corp.
 Date Submitted May 20, 1975
 Quantity (C.Y.) 5,000
 Disposal Site Alcatraz
☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete; time indicates total days needed for receipt of necessary data for application completeness.

Application Submitted 3 No. of times
 Total no. of days needed for application review 105
 No. of days actual review 21
 Permit Coordinator Reviews Application for Required Data

Resources Agency mailed State comments 32 days after Public Notice issued.

COE Issues Public Notice **38**



Numbers in Boxes Indicate Days Taken For Indicated Step.

Permit Granted or Denied; Status Reports; Comments

Action by COE. Permit granted or Denied

Dredging Application Process Authorized By SB 2418

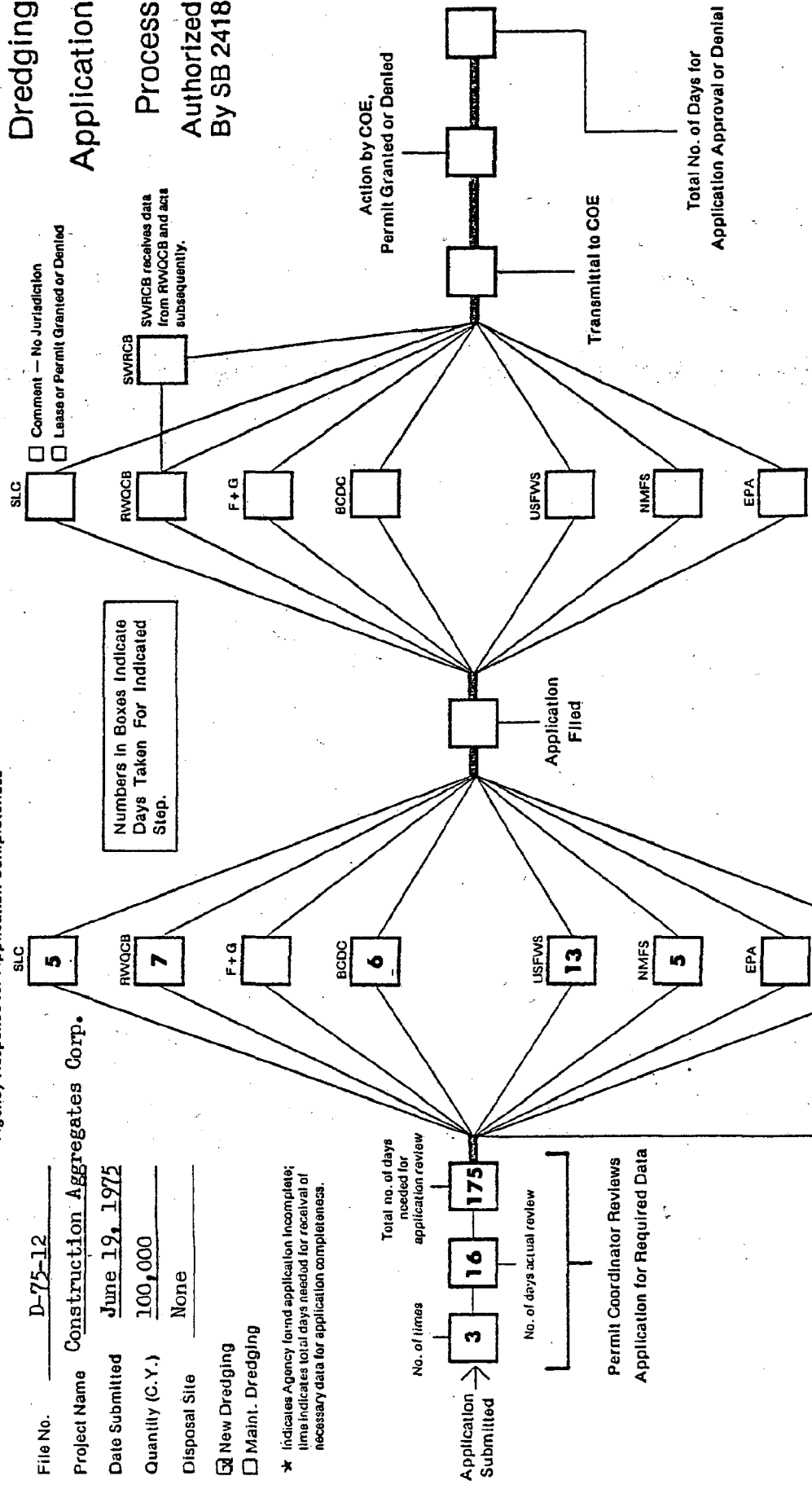
Agency Response for Application Completeness

File No. D-75-12
 Project Name Construction Aggregates Corp.
 Date Submitted June 19, 1975
 Quantity (C.Y.) 100,000
 Disposal Site None

☒ New Dredging
☐ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Numbers in Boxes Indicate
 Days Taken For Indicated
 Step.



Permit Granted or Denied;
 Status Reports;
 Comments

Action by COE,
 Permit granted or Denied

Total No. of Days for
 Application Approval or Denial

COE Issues Public Notice

Dredging Application Process Authorized By SB 2418

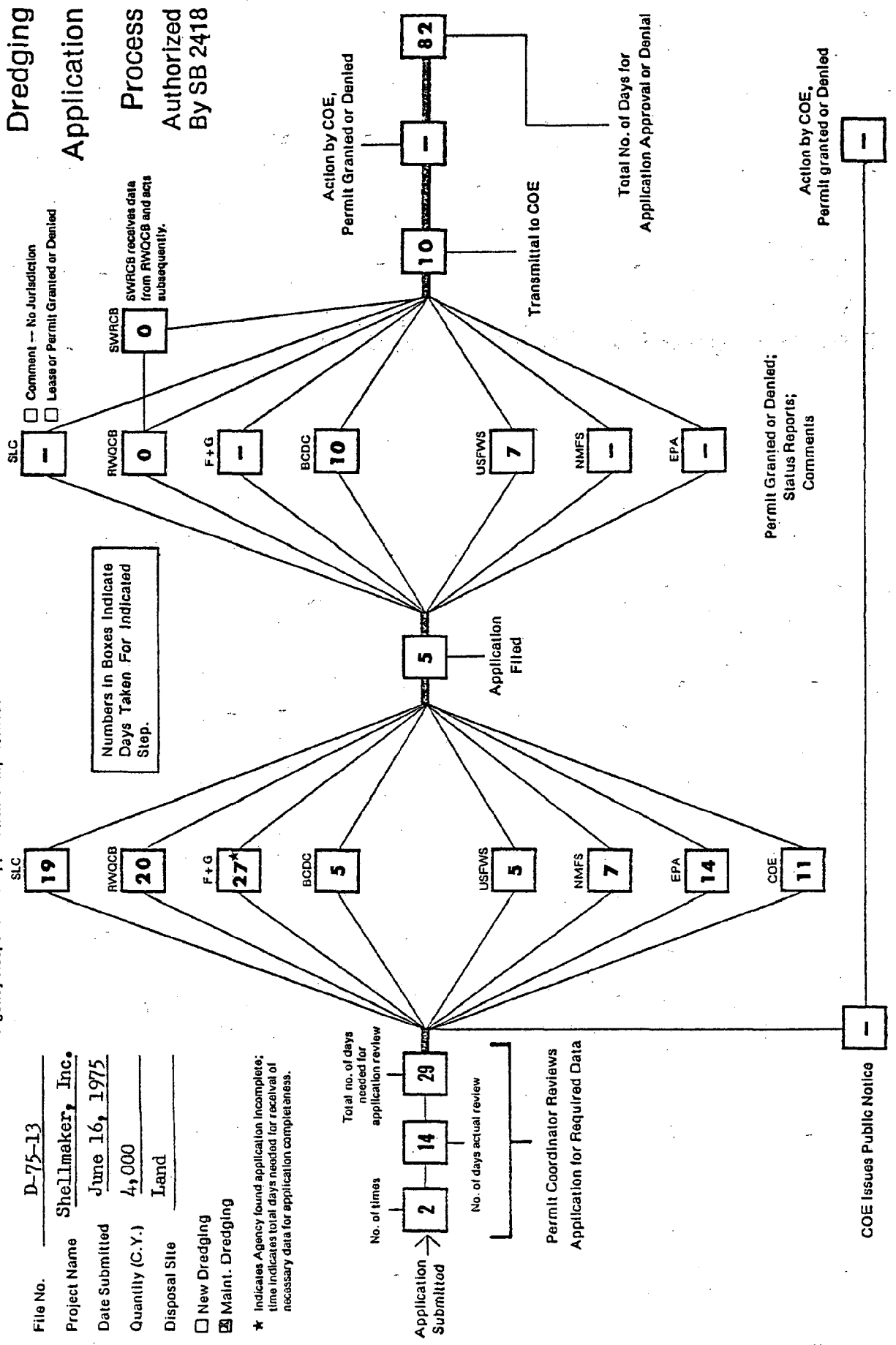
Agency Response for Application Completeness

File No. D-75-13
 Project Name Shellmaker, Inc.
 Date Submitted June 16, 1975
 Quantity (C.Y.) 4,000
 Disposal Site Land

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete; time indicates total days needed for receipt of necessary data for application completeness.

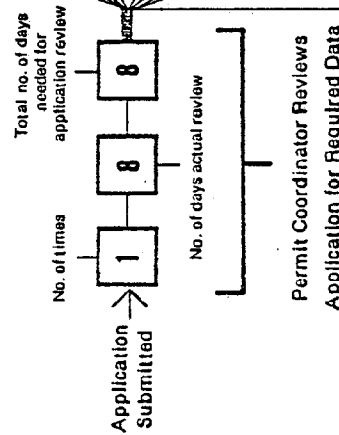
Numbers in Boxes Indicate Days Taken For Indicated Step.



File No. D-75-14
 Project Name Port of Oakland
 Date Submitted July 28, 1975
 Quantity (C.Y.) 30,000
 Disposal Site Alcatraz

☐ New Dredging
☒ Maint. Dredging

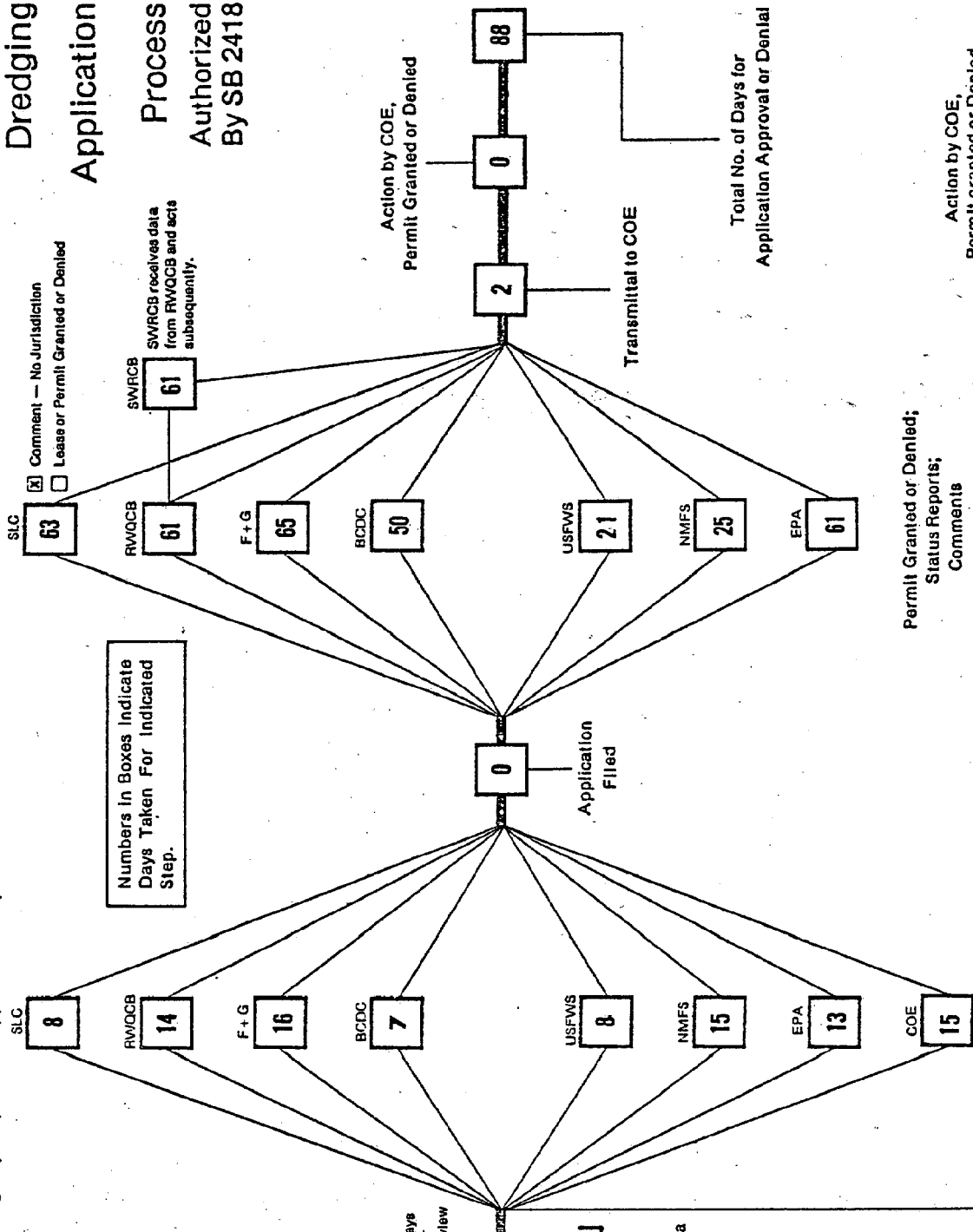
★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.



Resources Agency mailed State comments 36 days after Public Notice issued.

COE Issues Public Notice

Agency Response for Application Completeness



Dredging Application Process Authorized By SB 2418

Permit Granted or Denied; Status Reports; Comments

Action by COE, Permit granted or Denied

52

Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-15
 Project Name Paradise Cay
 Date Submitted Aug. 11, 1975
 Quantity (C.Y.) 15,000
 Disposal Site Alcatraz

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

No. of times
 Application Submitted → 2

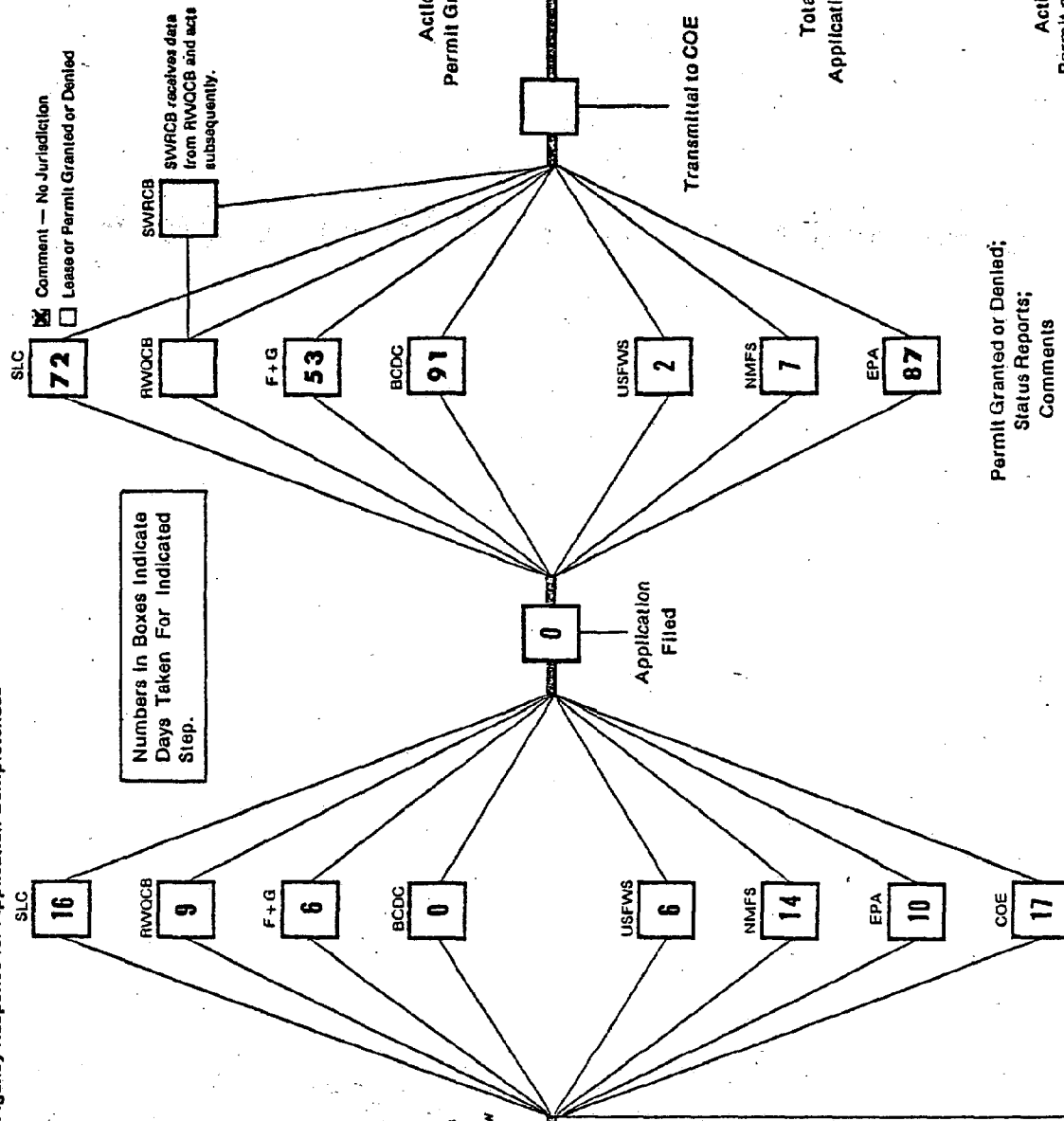
Total no. of days
 needed for
 application review
8

No. of days actual review

Permit Coordinator Reviews
 Application for Required Data

Resources Agency mailed
 State comments 28 days
 after Public Notice issued.

COE Issues Public Notice



Dredging Application Process Authorized By SB 2418

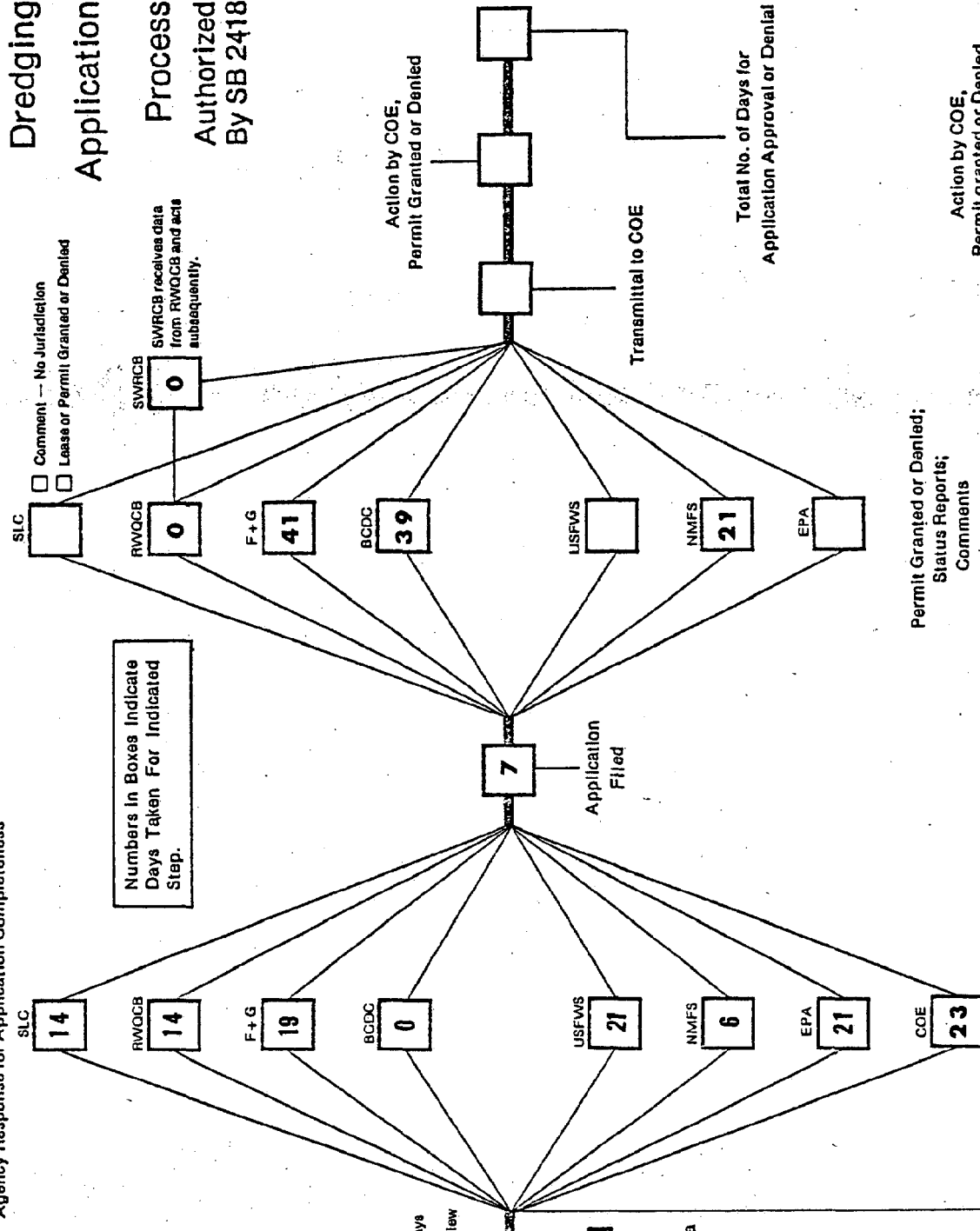
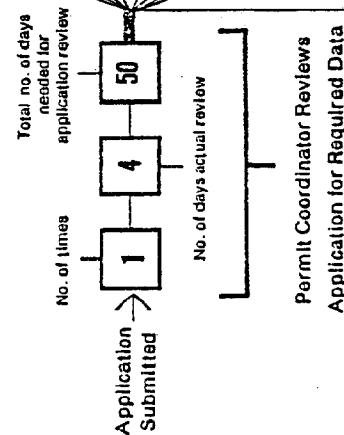
Agency Response for Application Completeness

File No. D-75-16
 Project Name P. G. & E.
 Date Submitted Aug. 15, 1975
 Quantity (C.Y.) 26,500
 Disposal Site Alcatraz

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Numbers in Boxes Indicate
 Days Taken For Indicated
 Step.



Resources Agency mailed
 State comments 43 days
 after Public Notice issued.

Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

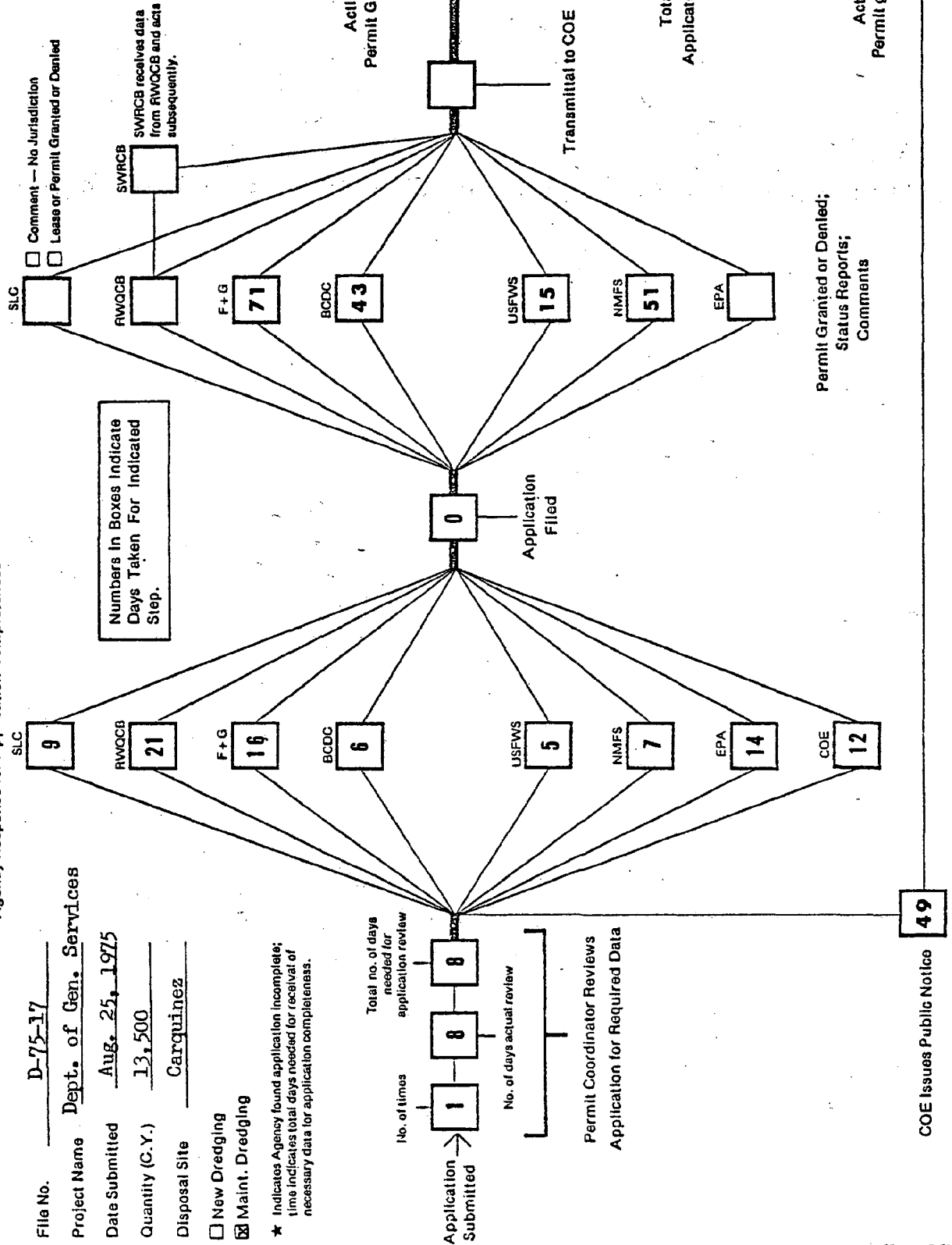
File No. D-75-17
 Project Name Dept. of Gen. Services
 Date Submitted Aug. 25, 1975
 Quantity (C.Y.) 13,500
 Disposal Site Carquinez
☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

No. of times
 Application Submitted → **1**
 Total no. of days
 needed for
 application review **8**

No. of days actual review

Permit Coordinator Reviews
 Application for Required Data



Dredging Application Process Authorized By SB 2418

Agency Response for Application Completeness

File No. D-75-18

Project Name Benicia Port Terminal Co.

Date Submitted Oct. 20, 1975

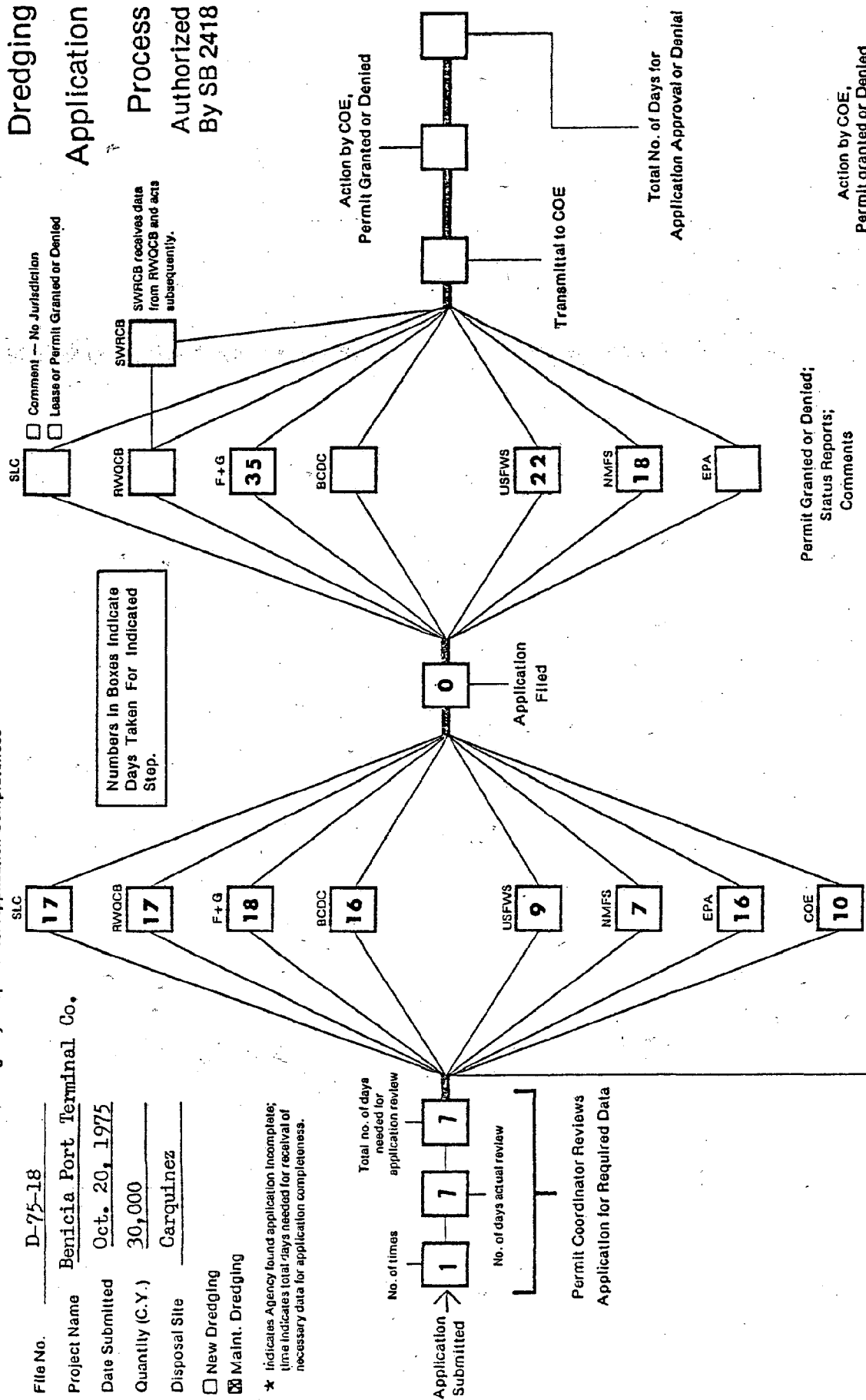
Quantity (C.Y.) 30,000

Disposal Site Carquinez

☐ New Dredging

☒ Maint. Dredging

* Indicates Agency found application incomplete;
time indicates total days needed for receipt of
necessary data for application completeness.



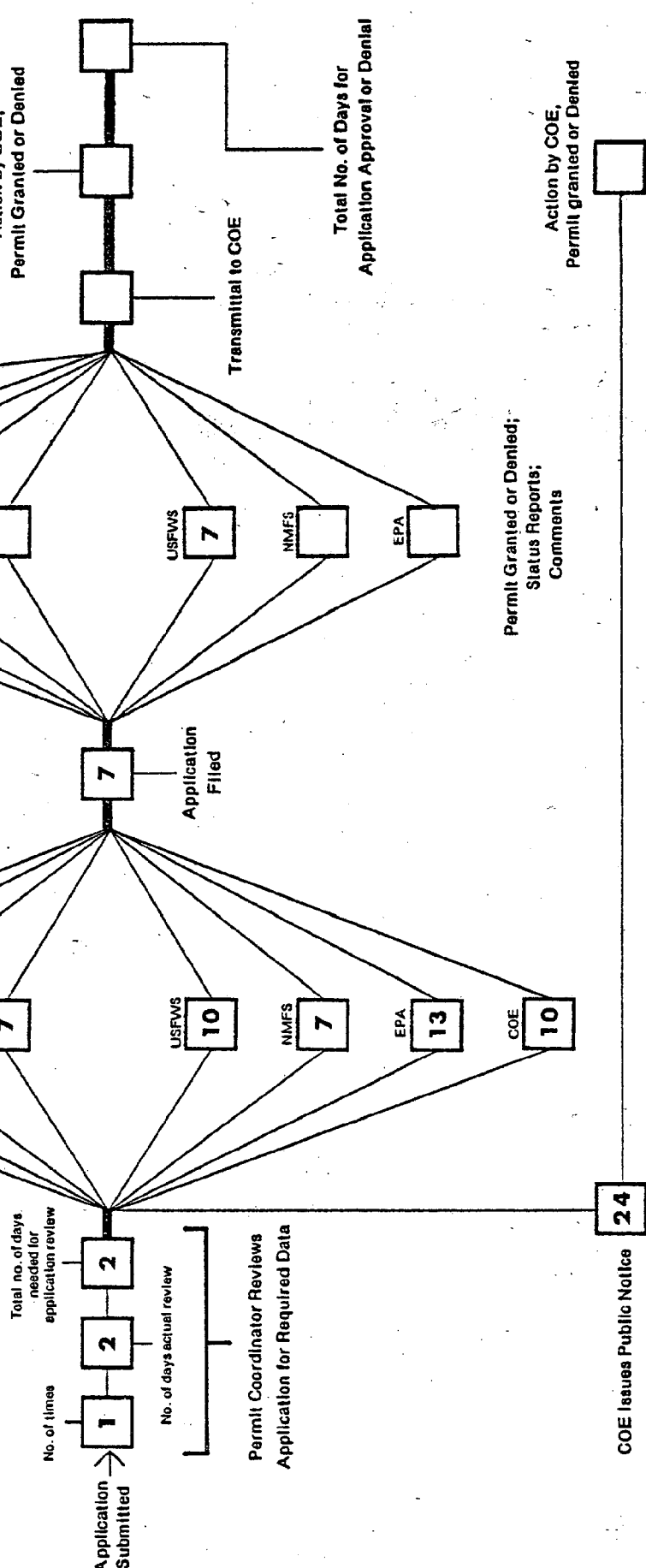
Agency Response for Application Completeness

Dredging Application Process Authorized By SB 2418

File No. D-75-19
 Project Name Standard Oil Co.
 Date Submitted Nov. 19, 1975
 Quantity (C.Y.) 75,000
 Disposal Site Alcatraz

- ☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete; time indicates total days needed for receipt of necessary data for application completeness.



Agency Response for Application Completeness

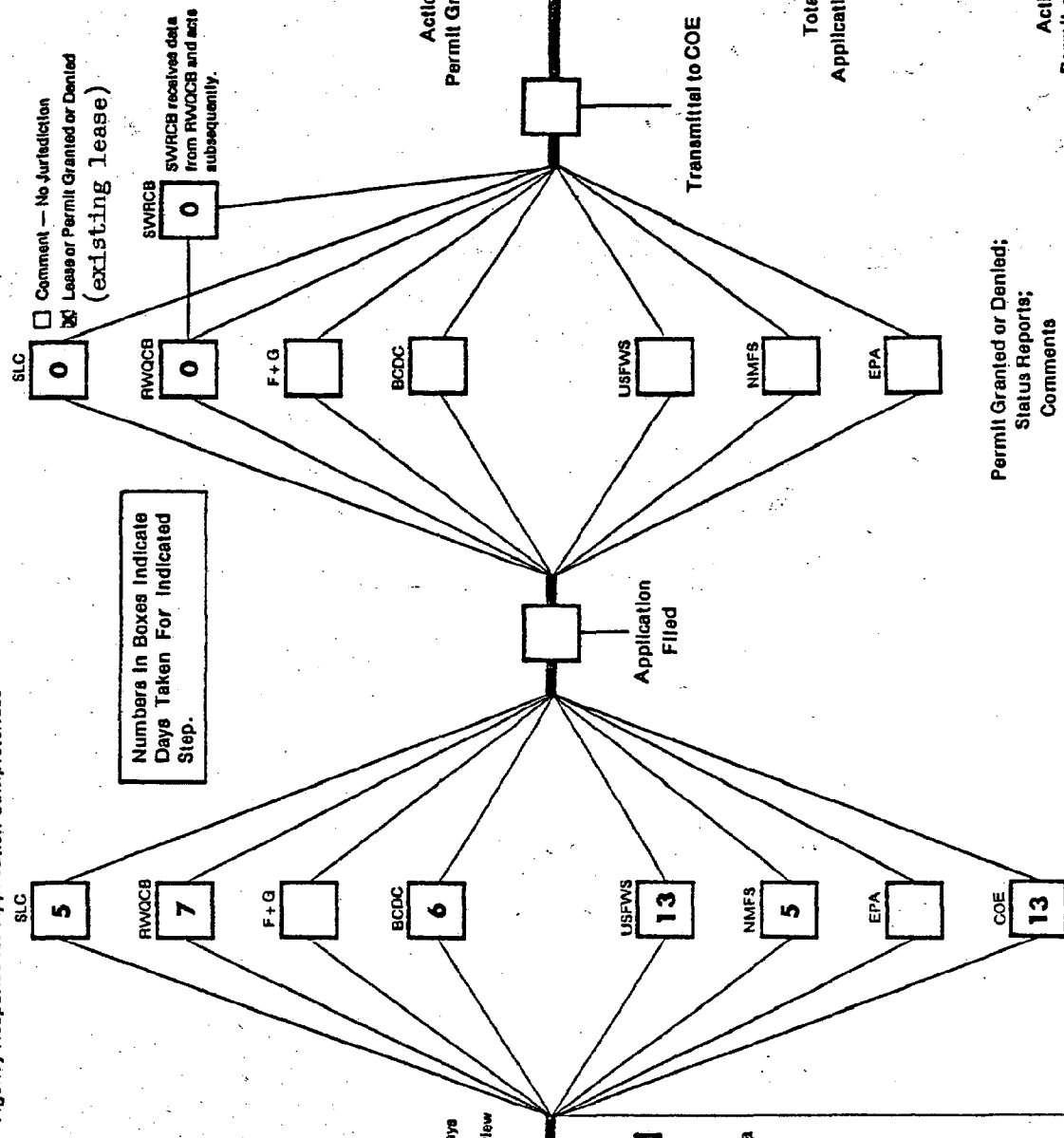
**Dredging
Application
Process
Authorized
By SB 2418**

File No. D-75-20
 Project Name Moe Sand Co.
 Date Submitted Dec. 1, 1975
 Quantity (C.Y.) 100,000
 Disposal Site None

☒ New Dredging
☐ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Application Submitted 2 4 9
 No. of times No. of days actual review
 Permit Coordinator Reviews
 Application for Required Data

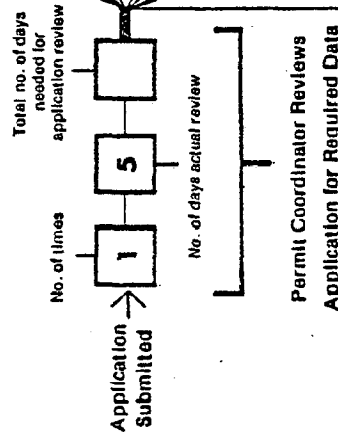


COE Issues Public Notice

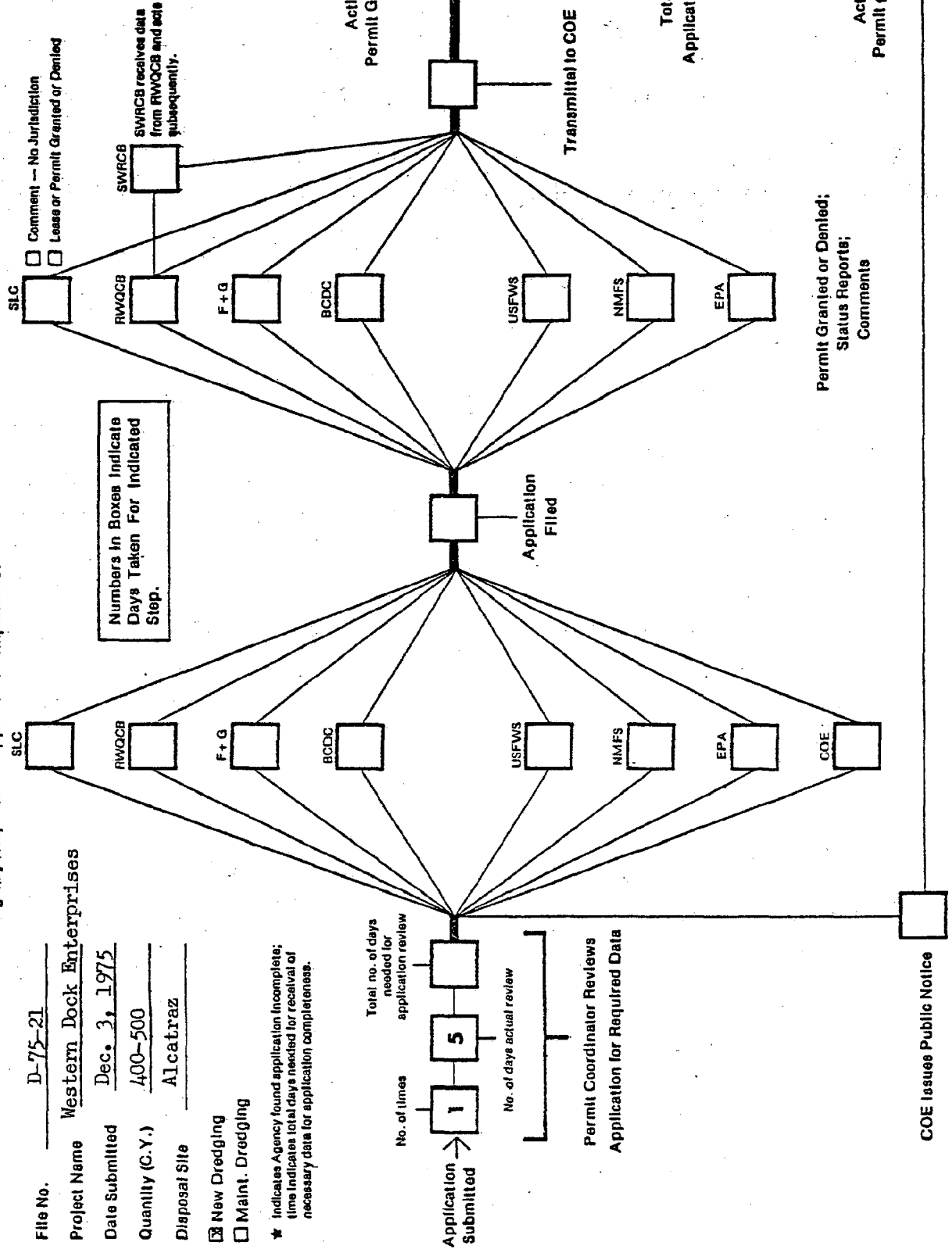
Agency Response for Application Completeness

File No. D-75-21
 Project Name Western Dock Enterprises
 Date Submitted Dec. 3, 1975
 Quantity (C.Y.) 400-500
 Disposal Site Alcatraz
☒ New Dredging
☐ Maint. Dredging

★ Indicates Agency found application incomplete; time indicates total days needed for receipt of necessary data for application completeness.



Dredging Application Process Authorized By SB 2418



Dredging Application Process Authorized By SB 2418

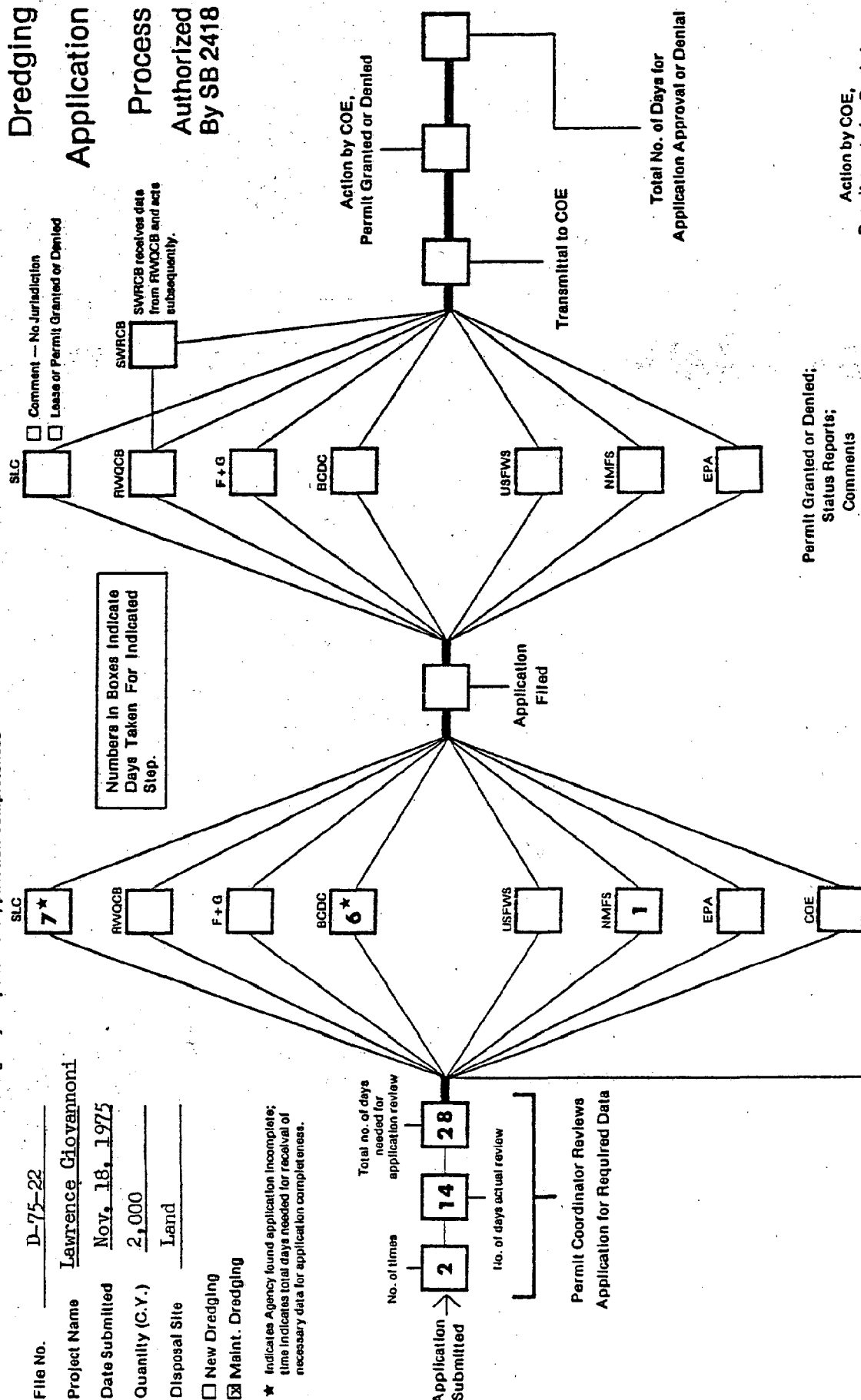
Agency Response for Application Completeness

File No. D-75-22
 Project Name Lawrence Giovannoni
 Date Submitted Nov. 18, 1975
 Quantity (C.Y.) 2,000
 Disposal Site Land

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Numbers in Boxes Indicate
 Days Taken For Indicated
 Step.



Agency Response for Application Completeness

Dredging
Application
Process
Authorized
By SB 2418

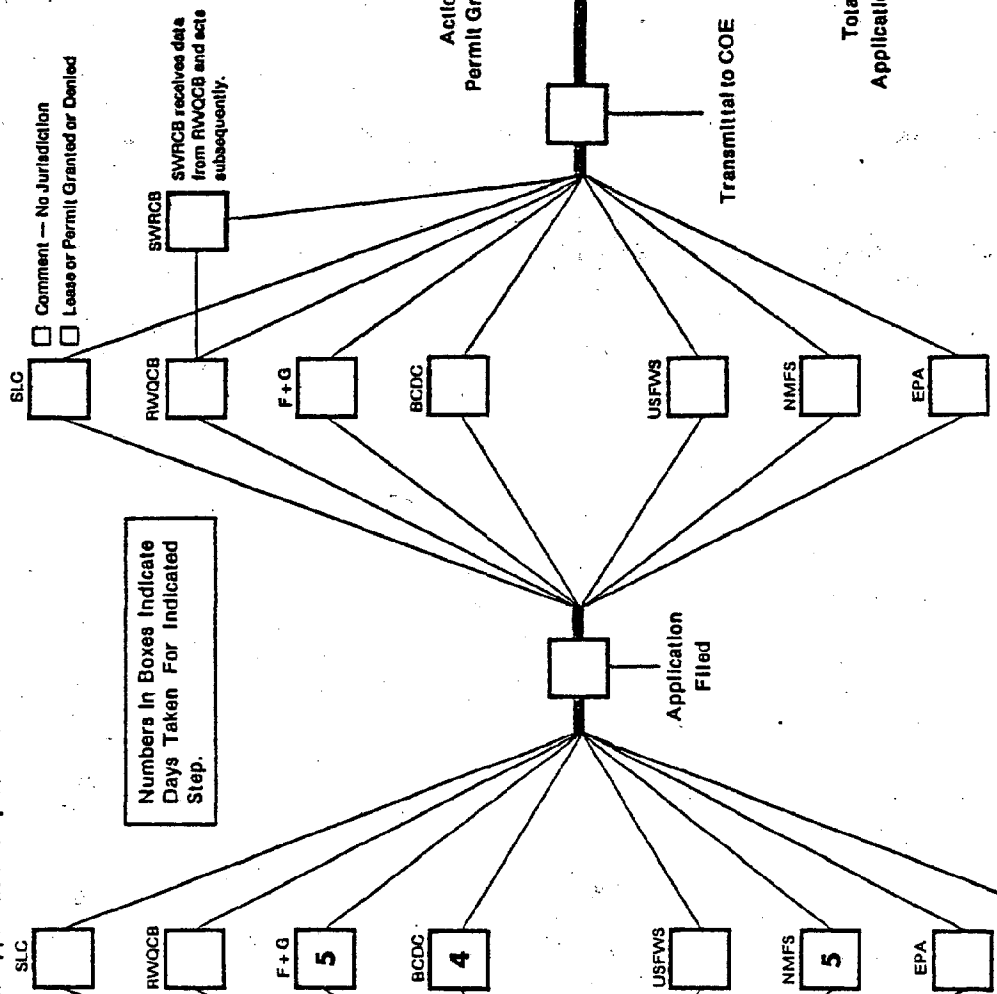
File No. D-75-23
 Project Name Harry Eason
 Date Submitted Dec. 11, 1975
 Quantity (C.Y.) 300
 Disposal Site Land

☐ New Dredging
☒ Maint. Dredging

★ Indicates Agency found application incomplete;
 time indicates total days needed for receipt of
 necessary data for application completeness.

Application Submitted 2 2 7
 No. of times No. of days
 Total no. of days needed for application review
 No. of days actual review

Permit Coordinator Reviews
 Application for Required Data



Permit Granted or Denied;
 Status Reports;
 Comments

Action by COE,
 Permit granted or Denied

COE Issues Public Notice

APPENDIX I

OUT-OF-STATE COORDINATION SYSTEMS

APPENDIX I OUT-OF-STATE COORDINATION SYSTEMS

At least five states have either implemented or begun to implement permit coordination systems of various types. Three of them—Washington, Oregon, and Florida—have enacted permanent coordination structures. Minnesota is contemplating doing the same. The fifth, California, is conducting a temporary experiment in coordination of dredging application which is evaluated in Chapter II of this report.

A. Washington—The Environmental Coordination Procedures Act of 1973

The Washington legislation, the only statewide coordination system to be fully implemented thus far, is available at the applicant's discretion for projects requiring at least one permit from the state Department of Ecology (DOE). Applicants using the coordination system begin by filing DOE's "master application" obtained from a county office or from one of the DOE offices. The offices serve as information centers to assist applicants in deciding whether or not to use the coordination procedures but, unfortunately, many counties lack the staff and funds to carry out these responsibilities.

DOE forwards the master application to State agencies, who in turn indicate whether or not they are "interested," which permit programs are applicable, and the likely value of a public hearing. An agency failing to assert its interest within 15 days waives it. Where permits are required, applicable forms for each agency are sent to the applicant by DOE. Completed and returned to DOE, they are forwarded to the appropriate agencies. Local government approvals are a prerequisite to filing the master application.

A notice containing the project description and the time and place of any required public hearing is published in a newspaper of general circulation in the project's county three times at one-week intervals. A public hearing must be held unless all interested State agencies and DOE indicate none is required. Hearings are chaired by DOE and jointly attended by all interested agencies. If there is no hearing, the public may submit written comments to DOE within thirty (30) days of the notice publication.

Following the hearing or written submissions, DOE sets a date for final permit decisions based on consultation with the agencies. There is no statutory time limit. Agencies retain whatever permit powers they possessed before coordination, although non-compliance with time limits (absent a grant of an extension) apparently bars further agency involvement. The authority of DOE as coordinator to time limits tailored to the nature of the project is unique to Washington.

Upon receipt of all agency decisions, DOE incorporates them into one document and delivers it to the applicant. Appeals are available, as is judicial review. An interesting dichotomy of appellate review standards has resulted from the voluntary nature of the coordination system. "Coordinated" agency permit decisions are sustained unless unsupported by material and substantial evidence, or if arbitrary and capricious or violative of any statutory condition. If an applicant proceeds with agencies individually, however, the appeal boards may reevaluate the entire project and reach a different result. Thus an applicant is in effect encouraged to shop for "favorable" procedures and not all applicants are treated equally.

To date, the Washington Coordination Act has been utilized for eighty-one (81) projects, primarily large and complex ones. Applicants with small

projects have generally been advised that the coordination procedures would not provide any significant benefit and might increase delays and expense. No project that was solely dredging has utilized the Act's procedures, though a number of projects including dredging have.

B. Oregon

1. Senate Bill 903-1975 Regular Session

Like the Washington legislation it resembles, Oregon's new coordination measure is intended to simplify permit application procedures, accelerate decision-making, centralize application information availability, and encourage joint Federal and local government participation in the procedures. The bill took effect January 1, 1976. As in Washington, use of coordination procedures is voluntary. Coordination information is to be available through the Executive Department (Governor's Office) and appropriate local government offices.-

Any applicant using the coordination system submits an application to the Executive Department and requests issuance of all applicable permits. The Executive Department then sends the application to all state agencies with a possible interest requesting an indication of their interest and applicable permit programs. Failure to assert an interest within 30 days waives an agency's jurisdiction.

The Executive Department then supplies specific permit application forms to the applicant, to be completed and returned directly to the appropriate agency with a copy to the Executive Department. No changes have been made in agency processing procedures or time limits. A consolidated hearing is available but, unlike Washington, must be specifically requested by either an agency or the applicant.

2. Lower Willamette River Management Plan

Coordinated uniform permit procedures have been combined with land and environmental planning for Oregon's major port and population center, the Lower Willamette River Valley. The "Management Plan" embodies policies and guidelines for the management of the 17 mile portion of the Willamette River, agreed upon by all regulatory agencies, and an administrative process designed to facilitate permit review. The guidelines contain specific land use, water quality, and fish and wildlife preservation standards.

Applicants submit an application to the Corps of Engineers. A public notice is prepared and a copy sent to the central state clearinghouse. If the proposed project conforms to the Management Plan, the clearinghouse circulates a permit review form to all necessary state agencies which then have ten (10) days to respond. If no negative comments are received the clearinghouse forwards the Corps Public Notice to the Governor's Office recommending approval of the project by the Corps. If a state permit is required, the same recommendation is made to the Division of State Lands, which is constitutionally required to manage lands belonging to the state.

If a proposed project does not comply with the plan, the applicant is immediately notified, a lengthy permit review form is issued, and state agencies have thirty (30) days to specify points of non-conformance prior to the applicant requesting State Lands authorization for his project. A newly proposed amendment would limit the total agency review time to twenty (20) days for a conforming project and ninety (90) days for a project not in compliance with the plan. Presumably dredging projects within the scope of the Willamette Plan and coordination and conforming with it are more quickly

reviewed than those outside the plans area, as proposed time constraints for conforming projects are shorter than those allowed by State Lands for dredging projects generally.

Dredging is defined as a major type of alteration to the Willamette River, and is subject to a permit procedure. The plan puts applicants on notice of the management policies for the region, the river zone his project is in, sets forth guidelines for that zone and indicates whether or not his project is one considered beneficial and therefore permissible in that location. Applicants can therefore anticipate the length and complexity of the review process, and tailor their proposals to avoid time, expense, and frustration.

C. Florida—Environmental Reorganization Act of 1975

The changes in Florida procedure appear more pervasive than those in Washington and Oregon. The Florida Environmental Reorganization Act of 1975, effective July 1, 1975, is intended to promote the efficient, effective, and economical operation of state environmental agencies by centralizing responsibility for environmental management, authorizing delegation of substantial decision-making authority to a regional level, and consolidating administrative, planning, permitting, enforcement, and operational activities.

A new Department of Environmental Regulation, headed by a secretary appointed by the Governor, is composed of administrative services, environmental programs, and environmental permitting divisions. The secretary is to establish environmental districts with boundaries and office locations to generally coincide with existing water management districts, but modifiable to best serve the purposes of the legislation. The act also creates the Environmental Regulation Commission as a part of the Department of Environmental Regulation.

This Commission sets all standards and processing procedures for the Department of Environmental Regulation. It also acts as an appellate body for all actions of the Department of Environmental Regulation, except those involving State lands. Where State lands are at issue, the Governor and cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund and owners of State lands, hear and decide appeals of its decisions.

The Secretary may delegate permit and other department authority to district managers, except where projects will have regional impact. Regional projects must be centrally processed. The majority of applications will be handled by district offices.

The Environmental Permitting Division of the Department of Environmental Regulation processes designated permits, licenses, and certificates, and establishes uniform procedures and forms.

The Secretary is authorized to adopt a short form application and special procedural rules for certain statutorily defined activities, including, among other things, dredge or fill of less than 4,000 cubic yards, maintenance dredging for navigation channels, turning basins and berthing areas if performed within ten (10) years of the original permit issuance, and maintenance dredging within ten (10) years of permit issuance of existing man made channels and intake and discharge structures to original design specifications where the original permit was granted prior to July 1, 1975.

D. Minnesota—Environmental Coordination Procedures Act

Minnesota is currently considering an "Environmental Coordination Procedures Act," an intricate legislative proposal. The act's procedures would be available to anyone applying for more than one of 180 environmentally related permits designated by the state.

A coordination unit in the Council on Environmental Quality would be established to provide applicants with master application forms. All necessary local approvals including locally required environmental documents must be obtained within ninety days after receiving the master application.

The coordinator would forward the completed master application to all agencies with a possible permit interest, the agencies then having twenty days to indicate any interest, their applicable permit procedure, and their desire for a public hearing. As with the previously discussed systems, failure to assert an interest constitutes a waiver of review authority. The applicant is then supplied with the necessary project applications and ninety days in which to complete them. The coordinator then forwards them to the agencies within ten days.

A public notice describing the project and announcing the public hearing, if any, would then be published in a local newspaper. Hearings, if required, would be jointly held for all agencies unless the chairman of the Council on Environmental Quality determines that a joint hearing would be contrary to the public interest. Any agency's participation is optional. If no public hearing were to be held, written comments would be sent to the coordinator within thirty days following the notice publication for forwarding to each agency.

Following the hearing or commenting period, each agency would have to report proposed findings and conclusions to the coordinator within a reasonable time, copies of them being sent to all interested agencies. Final agency decision deadlines are to be set by the coordinator, not to exceed sixty days from the close of the public hearings or commenting period. When all are received, the coordinator compiles them and delivers them to the applicant. All time limits

may be extended by the chairman of the Council on Environmental Quality for reasonable cause and no methods of enforcement of time limits is provided. No special appeal procedures are provided.

APPENDIX J
QUESTIONNAIRE RETURNS

APPENDIX J QUESTIONNAIRE RETURNS

This appendix contains some information on dredging which is conducted outside of San Francisco Bay. In calling for this report, the Legislature asked for advice on the possible statewide application of any recommendations. With the assistance of the U. S. Maritime Administration, questionnaires were sent to all commercial ports in California (excluding the Bay Area ports), and selected ports in other Pacific Coast states. Several small boat marinas and private industries with waterfront facilities were also contacted. The questionnaire, a copy is in this appendix, was intended to compile data outside the Bay Area, to survey experience with permit delays, and to uncover any unique problems or noteworthy regulatory procedures.

The distribution of questionnaires is summarized in Table VIII. Eighty percent of the questionnaires were returned, many with additional explanatory information.

TABLE VIII

PORTS AND MARINAS SURVEYED

<u>Location</u>	<u>Number of Questionnaires Mailed</u>
California (excluding the Bay Area)	
Ports and Harbor Districts	12
Marinas	23
Private Facilities	4
Alaska, Hawaii, Oregon, and Washington	
Ports	18
Private Facilities	4
TOTAL	<u>61</u>

Analysis of returned questionnaires shows that the regulatory agencies in other parts of California, their procedures and application time requirements are similar to the agencies active in the Bay Area. Respondents from outside of California indicated the same Federal agencies and similar state agencies are involved in their states. In general the time required to secure permits in other Pacific states is less than in California.

In answer to a specific question regarding the length of time port and marina interests considered appropriate for agencies to spend processing applications, about 80 percent answered less than 60 days. A few said permits should be issued in less than 30 days. The majority noted that presently the average length of time to receive all necessary permits is between 90 and 180 days.

Several respondents listed their view of the dredging problems. The most frequently mentioned were the following:

1. Disposal of dredge spoils (especially polluted spoils);
2. Delays encountered in seeking permits; and
3. Uncertainty as to which agencies have jurisdiction and what procedures and policies are applicable.

Many respondents stressed that maintenance dredging was of particular importance to their operation because the safety and economic security of ongoing operations required adequately deep water. They argued that the importance of providing safe operating conditions requires that applications for maintenance dredging should receive quicker action than should an application for new work.

Concerns regarding delay and uncertainty, and the special role of maintenance dredging applications are addressed in Chapters I through III of this report. Returned questionnaires are not included in this report, but they are available for review at the BCDC offices.

PHONE: 557-3686

Facility Name:

Facility Address:

1. Facility Type: _____ Port, _____ Marina, _____ Petroleum Terminal, _____ Other.
(please specify)

2. Purpose, quantity, and frequency of dredging. Indicate the first part by check marks and the latter two by a numerical answer:

<u>Channel Maintenance</u>	<u> </u>	cubic yards every	<u> </u>	years, months (circle one)
<u>Berthing Maintenance</u>	<u> </u>	"	"	"
<u>Pier and Piling Inspection</u>	<u> </u>	"	"	"
<u>Utility Installation</u>	<u> </u>	"	"	"
<u>New Construction</u>	<u> </u>	"	"	"
<u>Other (specify)</u>	<u> </u>	"	"	"

3. Type of material dredged: _____ sand or gravel, _____ silt and clay, _____ shells,
other (specify) _____

4. Which of the agencies below are involved in your dredging approval process?

U. S. Army Corps of Engineers.

Environmental Protection Agency, Region

United States Fish and Wildlife Service

National Marine Fisheries Service

California Coastal Zone Conservation Commission, Regional Comm.

California Regional Water Quality Control Board, Region

California State Lands Commission

California Fish and Game, Region No.

OTHER AGENCIES: To what other local, regional, state, or federal agencies (including those requiring building or use permits) must you send permit applications?)

Local Government Unit

a. City or County: ☐ Yes ☐ No. If yes, given name and address.

b. Special District (e.g. Port District): ☐ Yes ☐ No. If yes, give name and address.

Other regional, state, and federal agencies: Give name, location, interest (e.g. wildlife, land use, water quality), region (where appropriate), and responsibility (whether permitting or commenting agency).

NAME, LOCATION, INTEREST	REGION	RESPONSIBILITY (circle one)
1. _____ _____ _____	_____	permitting/commenting
2. _____ _____ _____	_____	permitting/commenting
3. _____ _____	_____	permitting/commenting

5. Permit Processing Procedures:

A. Is there a formal system for permit coordination among the agencies requiring permits from you? ☐ Yes ☐ No ☐ Don't know

B. Is there one application form acceptable to all of the agencies? ☐ Yes ☐ No
If not, how many applications are necessary? _____

C. Do any agencies have specific time limits in processing permit applications?
☐ Yes ☐ No If yes, which agencies and what are the limits?

Agency	Time Limit
_____	_____
_____	_____
_____	_____
_____	_____

D. What is the average time after a complete application has been submitted until all agencies have acted?

☐ Under 30 days, ☐ 30-90 days, ☐ 90-180 days, ☐ over 180 days.

Do any of the agencies have short-cut procedures to allow for rapid processing of non-controversial or routine applications? Yes No
If yes, which agencies and how long does this processing take?

Time

- E. Assuming that some regulation of dredging is necessary, what would you consider to be a reasonable period of time necessary to process applications?

_____ Under _____ 30-60 days _____ 60-90 days _____ 90-180 days _____ Over 180
days

- F. Are permits for longer than a 12-month period granted? _____ Yes _____ No
If yes, who grants these permits and for how long? _____

Time

- G. What is the cost to you in seeking dredging approval?

6. Are there any local or state land use plans or port plans which deal in any way with dredging? Yes No If yes,

Are specific spoil sites identified? Yes No.

Is dredging or spoiling prohibited in certain areas? Yes No.

Do they recognize that dredging is a necessary coorelative activity to shipping and boating? Yes No.

7. Does your port, terminal, or marina have a dredging plan under which projects are scheduled and given priorities? Yes No.

8. If additional information is desired from your organization, who should be contacted?
Give name, address, and phone.

9. Please elaborate on any special problems in your area that affect dredging. For example, polluted dredged materials, availability of disposal sites, unusually high or low rates of siltation, unique environmental concerns. Also, please feel free to comment further on any of the above questions or on any related topics of concern to you.

APPENDIX K
MINUTES OF PUBLIC HEARINGS
AND
WRITTEN COMMENTS

NOTE: Minutes from the two public hearings held by BCDC in the preparation of this report and copies of all written comments received are included in this appendix.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-3686

TO: All Commissioners and Alternates
FROM: Charles R. Roberts, Executive Director
SUBJECT: MINUTES OF MEETING OF JANUARY 15, 1976

1. Call to Order. The meeting of the San Francisco Bay Conservation and Development Commission was called to order by Chairman Joseph C. Houghteling, at 1:40 p.m., in Room 1194, State Building, 455 Golden Gate Avenue, San Francisco.

2. Roll Call. Present: Chairman Houghteling, Vice Chairman Watkins, Commissioners Aramburu, Brann, Bruno, Chapman, Cooper, Cuneo, DeFalco (represented by Alternate Freeman), Feinstein, Flertzheim, Heller (represented by Alternate Becks), Henderson, Jacobson, Kopp (represented by Alternate Ergina), Kortum, Lollock, Northrop (represented by Alternate Golden), Ogawa, Osborn, Price, Speck (represented by Alternate Dowd), Steinberg, and Ward. Absent: Commissioners Boggess and Harper. Also present: Alternates Fraley, Stickney, Shelton, and Erskine.

3. Approval of Minutes of December 4, 1975.

MOTION: Commissioner Cuneo moved that the minutes be approved, seconded by Commissioner Flertzheim. The motion was unanimously approved.

4. Report of Chairman Houghteling.

a. Next Meeting. The next meeting will be on February 5, 1976, at 2:00 p.m., in the State Building in San Francisco. The tentative agenda includes a report on the fish and game element of the Suisun Marsh Protection Plan, as required by Senate Bill 1981, by Mr. Charles Fullerton, Director of the Department of Fish and Game; voting on the Bay Farm Island permit for three control structures, the Claim of Exemption of the Bisso Brothers; and public hearings on permit applications of Trademarks Homes, Benicia, and Alviso Marina, Santa Clara County.

Chairman Houghteling said that the complete report on the fish and game element of the Suisun Marsh Protection Plan which is quite a long report, will be sent to those Commissioners and Alternates who request it. A summary of the report will be mailed to all Commissioners and Alternates before the next meeting.

b. Introductions. Chairman Houghteling introduced Supervisor William Kortum, new Commissioner from Sonoma County, and Supervisor Thomas Hannigan (Alternate to Richard Brann), Commissioner Osborn introduced her Alternate Pat Shelton, from Santa Clara County.

5. Report of Executive Director. Mr. Roberts said the list of sixteen administrative permits filed since the last meeting was mailed to the Commissioners in a memorandum dated January 5, 1976. The State Lands Commission has written expressing its concerns with five of the applications; these will be resolved before proceeding with issuance of the permits. Chairman Houghteling asked if there were any questions and there was no response.

Mr. Roberts called attention to Amendment Two to Permit No. 11-73, Palo Alto, and said the staff advised the County that an amendment was required for work being done

around the Yacht Club. In response to public concern with the public access around the Yacht Club, Kent Watson, staff Design Analyst/Landscape Architect, has negotiated with the County representatives and has obtained what staff feels is adequate public access.

Mr. Watson indicated the public access on a drawing. He said a fence had been removed and the County raised the area to prevent flooding. The area has been "rocked" to provide a firm base for temporary trailer storage and rigging of sailboats. The staff's primary concern was visual access to the Bay from the public access and roadway, as well as physical access along the shoreline.

Commissioner Steinberg said she would like to see three conditions in the amended permit; First, a requirement that a sign, approved by the Commission, be placed to indicate where public access exists; secondly, that the master plan be completed before the Yacht Club lease lines are set; and third, that the proposed three-foot railing be authorized only until the master plan and lease lines have been approved and relocated if necessary, to conform with the lease lines. She said the Yacht Club has expanded the area previously used by almost one-third more than that previously enclosed by the fence which was removed, and now the Yacht Club is asking that the three-foot railing enclose this larger area. Commissioner Steinberg said that until a master plan is completed it will not be known where the lease lines will be drawn; therefore precautions should be taken so that the authorization of the three-foot rail will not be misinterpreted. Mr. Roberts said the staff will check with the applicant and, unless the County has a problem, those conditions will be included in the administrative change. Chairman Houghteling asked if there were any questions on the changes, there was no response.

Mr. Roberts said on December 24, 1975, an emergency permit, No. E-29, was issued to John A. Blume and Associates for the replacement and repair of a pier that had been damaged by a ship collision. Some of the decking and the pilings had to be replaced on a one-for-one basis. The approximately 6,600-square-foot pier belongs to the Holly Corporation and is situated near Martinez in the Bay, in Contra Costa County.

6. Commission Consideration and Possible Approval of a Procedure for Payment of Per Diem to Commissioners and Alternates. Thomas D. Hoard, Assistant Executive Director, Administration said a memorandum was sent to the Commissioners on January 9, 1976, explaining the system for per diem pay. He said that the system for paying per diem, as described under Item 3, has been changed. Instead, the procedure will be much the same as the treatment of travel expense claims. The staff will indicate what would normally be paid as travel expense, but per diem will be paid in lieu of those expenses. Both will be shown for tax purposes, the actual expenses and the per diem, and the staff will forward a statement at the end of the year, listing actual expenses vs. the amount of per diem paid.

Vice Chairman Watkins said she would propose a more definite rule for attendance. After discussing some of the qualifying rules used by other agencies, she would propose that the Commission use the ABAG rule for a model. The ABAG rule is that a member must appear within 15 minutes of the beginning of a meeting and remain until the end of the meeting to qualify for per diem. She said she would suggest that the arrival time be extended to thirty minutes from the beginning of the meeting, because of the problems of parking here in the City. Commissioner Cuneo said she agrees wholeheartedly and thought the measure would help to retain the quorums.

MOTION: Vice Chairman Watkins moved that a rule be adopted for attendance that would require Commission members to appear within 30 minutes of the beginning of a Commission Meeting and to remain until adjournment to qualify for per diem. The motion was seconded by Commissioner Cuneo.

Commissioner Henderson said she was in support of the Vice Chairman's motion, but would raise a question with regard to the rule requiring that members remain to the end of meetings, since occasionally meetings run quite late and there is no way to anticipate time of adjournment. This could be accommodated, for bona fide reasons, by advance notification by Commissioners who must leave prior to adjournment.

MOTION: Commissioner Henderson moved to amend the main motion, that members could qualify for attendance without staying until the end of the meeting if there was advance notice of having to leave approved by the Chairman; seconded by Commissioner Brann.

Commissioner Feinstein asked if the only allowable reason for leaving early would be to attend another scheduled meeting. Commissioner Henderson said that had been the only reason she has had; others might have a personal reason. Her concern was that it was difficult to know an exact adjournment time and this often resulted in hardship for members.

Commissioner Ogawa asked how far in advance notice should be given. Commissioner Henderson said she presumed by the beginning of the meeting. Chairman Houghteling said the amended motion was before the Commission which provided the members must appear within 30 minutes of the time of the meeting, stay for the full meeting unless excused by the Chairman prior to the meeting.

Commissioner Chapman asked if the Commission had the ability to make such a decision since State legislation provides \$50 per diem per meeting. Mr. Hoard said it appears to be within the Commission's discretion.

Commissioner Bruno said he thought this was a tempest in a teapot, and he would like to see a requirement that everyone stay until the end of the meeting, which would mean members must make plans accordingly and also that the Chairman move the meeting along to avoid late adjournment.

Chairman Houghteling asked if there were any further questions or discussions and there was no response. He called for a vote on the amendment to the main motion by a show of hands; the vote was 10 in favor, 14 against. The amendment failed to pass.

Chairman Houghteling called for a vote on the main motion, that a Commissioner must arrive within 30 minutes of the time the meeting is called and stay throughout the meeting to the point of adjournment. The vote was 16 in favor, 8 against. The motion was thus approved.

Chairman Houghteling said he would note for the record those Commissioners serving on other committees on behalf of BCDC: on the ABAG-MTC Airport Planning Committee, Commissioner Watkins with Commissioner Jacobson as the Alternate; the MTC Seaport Policy Committee, Commissioner Osborn and Chairman Houghteling; on the ABAG Section 208 Water Quality Planning Task Force, Commissioner Jacobson; the South Richmond Special Area Planning Commission, Commissioner Jacobson and Commissioner Boggess, with Mr. Cline as Alternate.

7. Public Hearing and Possible Vote to Approve the Regulation of Dredging Study, Final Report. Chairman Houghteling called attention to letters of comment from other agencies, which were either mailed to the Commissioners or are in their folders, which include: the Secretary for Resources, Department of Fish and Game, State Water Resources Control Board, Department of Navigation and Ocean Development, Santa Clara Valley Water District, Regional Water Quality Control Board, and the Department of the Navy (San Bruno), copies of which are included as an official part of these minutes.

L. Thomas Tobin, Staff Engineer, said the report before the Commission represents a group effort which he believed would lead to speedier processing of applications for dredging permits. The report, and especially the recommendations, has been circulated widely. The staff asks that after the public hearing the Commission consider voting to adopt the report. On approval, the report will be forwarded to the Secretary for Resources for transmittal to the Legislature.

Mr. Tobin said there has been some misunderstanding regarding the scope of this report. Both Section 160 of the enabling legislation and the interagency agreement delegating the work to BCDC state that the report should address procedures affecting dredging applications statewide. The confusion arose because the act limited the geographical scope and type of dredging affected by the coordination experiment. Coordination only applies to all maintenance dredging and new dredging of less than 100,000 cubic yards conducted in the area of BCDC's jurisdiction, while the report deals with all dredging statewide.

A principal finding of the study is that delay is primarily caused by the amount of time it takes agencies to act rather than the lack of coordination. To reduce the delays, the staff has recommended adoption of administrative regulations and policies, and time limits with sanctions like those under which BCDC operates. Staff also recommends a loosely-structured on-going coordination effort in areas where needed, to enable agencies to effectively share activities; combined public hearings with the Corps of Engineers, is an example.

Mr. Tobin said there has been considerable discussion on how agencies should adopt and carry out the recommended policies. The staff recommends that policies should be adopted by each permitting or commenting agency after public hearings. Those who dredge have stated that the recommendations should be acted on by the Legislature--a forum where they will be heard. Others have suggested that all recommendations should be carried out administratively. The staff believes that most recommendations should be carried out administratively by the Secretary for Resources because it is faster, and provides flexibility for additional change. The Secretary for Resources is in a position of leadership and the influence of the office is significant.

Commissioner Lollock said the Secretary for Resources requests some editorial changes. He referred to a list of those changes in a memorandum to Mr. Roberts, dated January 14, a copy of which is attached to the official copy of these minutes on file in the Commission's office. Copies of the memorandum are in the Commissioner's folders.

The most significant comment concerns a recommendation that a portion of the Department of Fish and Game's budget for commenting on permits be included in the General Fund. The Secretary requests that this recommendation be deleted. The Agency believes that more appropriate alternatives for funds are available. He added that the Governor has already taken steps to eliminate the problem of understaffing noted in the staff's report.

Commissioner Lollock said the first change appropriately describes the role of the Department of Fish and Game as being custodian of the State's fish and wildlife resources. The next several changes are single word changes which the Resources Agency feels more clearly emphasized certain sections of the report. The Resources Agency recommends the report include a statement that the Agency has proposed a categorical exemption under CEQA for maintenance dredging of 10,000 cubic yards or less.

Mr. Tobin said staff has read and discussed the recommended changes and accepted them; there may be some minor editorial changes to integrate them into the report, but staff appreciates these comments.

Commissioner Lollock complimented the staff on behalf of the Secretary, for an excellent report.

Commissioner Aramburu asked if the report's recommendations would be automatically implemented if the Commission approved the report. Mr. Roberts said "no." When approved the report would constitute a set of recommendations to the Secretary for Resources and the Legislature. He referred to Table VI on page 55 which indicates the implementing agencies.

Chairman Houghteling said that staff was apparently willing to accept these recommended amendments from the Resources Agency, and hearing no objection he would consider them included in the report at this time, subject to other changes being made during the process of the public hearing and thereafter.

Commissioner Chapman said on the matter of the categorical exemption under CEQA for dredging of 10,000 cubic yards or less, it seemed the disposal of 10,000 cubic yards of spoils could cause a significant environmental impact therefore, he questioned the categorical exemption. Mr. Tobin said the Resources Agency proposal states disposal of spoils would have to be in an approved site, not on a wetland or other environmentally sensitive area. Commissioner Chapman asked if a negative declaration would cover the disposal of spoils. Mr. Tobin said if a project were considered categorically exempt, there would be no need for either a negative declaration or an environmental impact report unless the project is located where it could have a significant effect on the environment. In that case the lead agency would have responsibility for an environmental document. Commissioner Chapman asked why a categorical exemption was needed if the lead agency reviewed a project and issued a negative declaration. Mr. Tobin said a negative declaration must be circulated allowing a certain period of time for comments from other agencies. The categorical exemption is a finding made by the lead agency without the need for circulation. Commissioner Lollock said the Resources Agency proposals for categorical exemption will be among many to be considered at the public hearing to be held by the Agency later this spring.

Chairman Houghteling said the staff, as well as the Commission if it wishes, will consider the proposed guideline revisions of the Secretary. That will be the

point at which to address the details; Commissioner Lollock is asking simply that the factual point of information be included. Commissioner Chapman said, that the point of information on pages 60-61, is a recommendation. Mr. Roberts said the BCDC policy presently categorically exempts all maintenance dredging and new dredging up to 100,000 cubic yards, and has been so since CEQA came into existence. The report recommends that State guidelines list certain dredging as categorically exempt. BCDC's experience is that dredging can be categorically exempt and as Commissioner Lollock points out, public hearings are necessary. The need for dredging is caused by silting of material which is already moving within the water, not the introduction of new material into the system. Commissioner Chapman said then it was not the water course itself that causes problems, but where the spoils were disposed. Mr. Roberts said the disposal is categorically exempt if it meets certain disposal criteria, one of which is disposal at one of the Corps of Engineers approved sites; disposal in marshes is not allowed. Chairman Houghteling said the recommended change is an indication of what the Resources Agency is doing at this point, and perhaps when guideline proposals come out the Commission will again consider them.

Commissioner Flertzheim said his agency had a great interest in dredging, hence he would like to compliment Mr. Tobin and the staff for accomplishing a real public service in trying to bring some order to the whole dredging permit system and simplifying things for applicants.

Peggy Lang, Consultant to the Senate Committee on Local Government, said the Committee Chairman, Senator Milton Marks asked that she read his statement. Ms. Lang then read Senator Mark's letter, a copy of which is attached to the official copy of these minutes, on file in the Commission's office. In his letter, Senator Marks said that the investigation identifies the reforms necessary to solve permit problems, and while he commended BCDC on the report, he took issue on some points: State Lands Commission should be subject to the same time limits as other agencies; time extensions should not be granted for a clear oversight; and the report should have emphasized more legislative action to implement the recommendations.

Chairman Houghteling said there were some points which the Commission would return to for discussion after the public hearing. He said he was specifically referring to the point on the State Lands Commission. Ms. Lang said there was no intention to change the report itself. Chairman Houghteling thanked Ms. Lang for her presentation.

Michael J. Giari, representing Thomas J. Patterson, Jr., Western Region Director, U.S. Maritime Administration, said the report was a very thorough report on the regulation of dredging in the San Francisco Bay Area and in the State of California and was very well done. He said he would make three points contained in Mr. Patterson's statement: First, the description and the analysis of dredging regulation problems are excellent; It covers over thirty pages in the report and is very complex as is the problem itself. Second, the evaluation of the coordination experiment conducted by BCDC was surprising to the Maritime Administration in some ways. Those familiar with dredging and its regulation in the Bay Area, and with the Marks Bill expected that it might lead to the establishment of a permanent, statewide, dredging coordination agency. This was not the conclusion of the report, and the Maritime Administration felt that the conclusion--that the modification of existing regulations and increased coordination among the agencies--could lead to some definite improvements in the permitting system. Finally, and most importantly,

the Maritime Administration thinks these recommendations must be implemented.

It is a very complex set of recommendations, but he thought the recommendations could be compared to a heavy rainfall after a long dry period. He said these recommendations, as a heavy rainfall, are coming all at once. If the agencies are like hard ground and are not ready to absorb these recommendations, all benefits would be lost. Mr. Patterson urged the Commission to emphasize the need for implementing the recommendations as soon as possible, hopefully by early 1977. He said consideration should be given to delegating progress review in the future to BCDC, the agency which in compiling this report has demonstrated its knowledge and expertise on this subject. To summarize, he said the Commission had before it a good report which contains a few surprises. He emphasized the importance of implementing these recommendations, making sure, through some kind of progress review, that these recommendations have been implemented.

Robert Langner, Executive Director of C-MANC (California Marine Affairs and Navigation Conference), an organization which represents the commercial ports and recreational harbors in California, said C-MANC's dredging committee had reviewed the final January 1, Regulation of Dredging Report and join in the commendations expressed to the BCDC staff and others involved. The report does an excellent job of defining the multifaceted problems which face all involved in dredging and navigation. He presented a statement commenting on recommendations in the report (a copy of which is part of this official record). He emphasized the need to implement the recommendations.

Ron Henrekin, Consultant, Solano County Industrial Development Agency, said the welfare of Solano County was highly dependent on dredging and had long suffered for all the problems associated with dredging regulations. Expansion of existing industry and development of new industry is dependent largely on adequately dredged channels. He presented a statement (a copy of which is attached to the official copy of these minutes on file in the Commission's office) which stressed the need for time limits, the automatic approval condition, and the need for public adopted policies and procedures. In conclusion, he said it was their experience that for the last several years, there have been several times when dredging permits were held up for more than a year, sometimes as long as fourteen months and in some cases it became almost impossible to get a ship into the dock because of the problem.

Thomas G. Bertken, Chief Engineer, Port of Oakland, presented a statement (a copy of which is attached to the official copy of these minutes on file in the Commission's office). He said the Port was in general agreement with the recommendations in the report and was especially pleased that some matters which have given them a lot of difficulty in the past were covered. In particular, with existing procedures there is no way to expedite small dredging projects or emergency dredging projects that occur when there is a high spot in the channel, or a berth causing problems with larger ships.

Anthony Taormina, Special Assistant to the Port Director Thomas Soules, Port of San Francisco, said Mr. Soules asked him to present his comments to the Commission (a copy of which is attached to the official copy of these minutes on file in the Commission's office). The Port of San Francisco urged the approval of the report and stressed the need for time limits and formalized criteria and policies.

BCDC Minutes
1/15/76

Marin Matosich, representing the California Marine Parks and Harbors Association (CMPHA), said his association includes recreational boaters. He was in accord with all the remarks by Mr. Langner and CMPHA is in general agreement with everything in the report. Since there exists recreational boating on the Bay, dredging will be necessary, and problems identified in the report cannot be afforded. These problems have become almost impossible to overcome. Marinas and recreational facilities simply cannot afford all the costs of full-time personnel needed to cope with all the regulations. Looking at the time-flow charts in Appendix H of the report, it is easy to see that the permit process is so complex and confusing that 68 percent of the applicants had to resubmit applications more than once, and 32 percent, three times. Simplified procedures are desperately needed; as well as specific time limits within which the agencies have to operate. If recreational boating is going to continue on the Bay vastly simplified and more accountable regulations are needed. He said he would like to commend the fine work of the BCDC in attacking this problem and recommended that the Commission move to implement the recommendations.

Rose Beatty, Peninsula Conservation Center, said PCC was in agreement with most of the report and the necessity for such a report. There was certainly a need to standardize procedures of regulatory agencies. However, PCC was strongly opposed to categorical exemption on new dredging of 10,000 cubic yards or less and believed applications should be reviewed on a case-by-case basis. Time limits should be standardized so that all have time to review, coordinate, and comment on applications. There is always confusion when one agency is on a different time schedule than another. An area not covered in the report is disposition of dredging spoils; procedures and policies should be made on disposal problems.

Chairman Houghteling asked if anyone else in the audience wished to speak on the Dredging Report. There was no response.

MOTION: Commissioner Lollock moved that the public hearing be closed, seconded by Commissioner Jacobson. The motion was approved unanimously.

Chairman Houghteling said the Dredging Report was now before the Commission, in addition to today's various comments. There were several comments about the State Lands Commission, and the staff recommendation that they not be subject to sanctions of automatic approval of permit applications because SLC's a property owner. There was another comment that there should not be a time extension for an oversight by an agency. There was some discussion of the categorical exemption of dredging projects under 10,000 cubic yards.

Mr. Golden said he believed it was proper to reply to State Lands. He agreed with Mr. Langner that it would be inappropriate for any agency to take more time than necessary. From SLC's point of view delay is caused by ownership and boundary determination. The uncertainty of title in many areas of the State leads to an honest disagreement between the applicant and SLC. Resolving these questions does take time. It is not an exercise of the police power. He agreed with Mr. Langner that State Land's should meet the 90-day deadline for granting permitting, except when more time is required to resolve trespass or boundary problems.

Commissioner Steinberg said several speakers addressed themselves to the 90-day limit and asked if the staff would comment on shortening the time limit. Mr. Tobin said the 90-day time limit should be the longest time allowed, and should apply to complex dredging projects. There were some shorter time limits considered, 45 days for minor projects, but staff ran into problems defining "minor." For example, BCDC might consider a project "minor" because of its effect on land use, while the RWQCB would determine a project "minor" by the cotamination levels in the spoils. Staff found problems with different time limits and decided to recommend 90-days as the maximum. It is the intent of the report, and hopefully the intent of the agencies carrying it out, that the minor projects should be acted on faster. BCDC, operating under a 90-day time limit, has found that it cannot afford to spend 90 days on the more simple administrative applications, they are processed much more quickly. He said staff was not against the shorter time deadline, but cautioned that it could cause complications.

Commissioner Chapman said he thought one of the important recommendations in the report is that oversight hearings be held early in 1977 to follow up on implementation and recommendations made in the report. He asked if it is appropriate for BCDC to ask that staff also analyze the implementation efforts that have been made and make a report at that time. Not only are there time problems with permits for dredging, but there are time problems in carrying out reports sent to the Legislature. He asked if the staff had in mind reviewing the progress in implementation, and if the staff would be amenable to suggesting to the Legislature that another report on implementation be funded by it. Mr. Roberts said that was an important point; staff does not recommend that BCDC be responsible for a report on implementation but recommends that it be done by the Legislature. Staff could monitor and report to the Commission on the progress, and if something should be done, a recommendation could be made at that time.

Chairman Houghteling asked if there were any other comments from the Commission members. There was no response.

MOTION: Commissioner Ogawa moved that the Regulation of Dredging Report, as amended, be adopted for submission to the Secretary for Resources and to the Legislature, seconded by Commissioner Price.

Chairman Houghteling said, if it is agreeable to the maker of the motion, he would like to include as another appendix the minutes of this public hearing as well as a summary of the earlier correspondence received. Everyone who received the report will know what occurred at the public hearing and the emphasis on various aspects of the report.

Commissioner Ward said that Mr. Golden had stated that the 90-day time limit was acceptable except for matters that involve clarification of title or trespass, and asked if that was to be included as an amendment to the report. Chairman Houghteling asked that the record show that the State Lands' representative stated that 90 days was a livable time limit, except when more time is required to resolve issues of trespass and property ownership. Chairman Houghteling asked if there were any further comments and there was no response.

Chairman Houghteling called for a voice vote, which unanimously approved the motion to adopt the Report.

Memorandum

To : Colonel Charles Roberts
Executive Officer
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Date : January 14, 1976

File No.:

Subject : Regulation of
Dredging Report

From : Office of the Secretary

Sections 160-170 of the Harbors and Navigation Code require the Resources Agency to coordinate the review of applications for maintenance dredging and new dredging of 100,000 cubic yards or less in San Francisco Bay. Section 169 requires that a report be submitted to the Legislature evaluating the coordination procedures and the regulation of dredging. The Resources Agency delegated responsibilities for coordinating permit activities and drafting a report to the San Francisco Bay Conservation and Development Commission.

We want to take this opportunity to compliment the BCDC staff on the thorough, professional manner with which it has carried out the above provisions of the Harbors and Navigation Code. Our comments and editorial recommendations are made in furtherance of the report's objectives. We concur that the report should not be construed as applying to projects for which dredging is only a part of a greater regulated activity, such as the filling of valuable wildlife habitat or the construction of a liquid natural gas terminal. There is a major difference between a routine dredging project and a major construction project.

We do have some editorial changes which we would like to see included in the report. The recommendations are made in the order which they appear in the report.

1. On page 13, in the first paragraph, delete the discussion of the Department of Fish and Game and insert:

"The Department of Fish and Game is charged with protecting and regulating California's fish and wildlife resources. In areas where Fish and Game possess commenting rather than permitting authority, the agency derives some of its authority from the same source as the United States Fish and Wildlife Service--the Federal Fish and Wildlife Coordination Act for projects undertaken or regulated by the Federal Government. Additional commenting authority is derived from the Porter-Cologne Act, the McAteer-Petris Act, the Fish and Game Code and other state statutes."

2. On page 14, third line from the bottom, delete "the" and insert "a slight".
3. On page 21, strike title 1 and renumber making conforming changes.

4. On page 24, five lines from the bottom, insert "dredging" between "the" and "permit".
5. On page 26, paragraph 1, delete the "Laboratory tests for detailed evaluation of project data may be required" and delete "chief executive officer" and insert "director".
6. On page 26, paragraph 3, delete the second and third sentences and insert, "The Department of Fish and Game has been particularly concerned about insufficient personnel and budget".
7. On pages 27 through 32 of the report, we concur that state agencies should have clearly defined policies and criteria by which they review an application for a dredging project. Some state agencies do not have a comprehensive plan such as BCDC has adopted and must review an application in accordance with statutory criteria. More precise definitions of phrases such as "significant effects" may be a useful way of establishing these criteria and avoiding uncertainty, but it must be recognized that stated criteria cannot entirely replace the discretion which an agency must exercise when dealing with diverse factual settings on a case-by-case basis. Insofar as possible, the exercise of discretion should be consistent with clearly stated objectives.
8. On page 27, title 1, strike "are either vague or nonexistent".
9. On page 31, bottom paragraph, delete the first two sentences and insert "Government should attempt to base its decision on clear policies which specify its objectives in carrying out a mandate to protect the public interest. Without such policies, action on an application can become uncertain or inconsistent".
10. On page 32, the last sentence of the first paragraph, delete "supported by written findings and reasons" and insert "explained and".
11. On page 32, title 2, delete "often do not exist".
12. On page 34 through 35, delete the two paragraphs concerning categorical exemptions which begin at the bottom of page 34, and insert:

"CEQA Guidelines should be amended to clarify how dredging is to be handled. The Resources Agency has proposed a categorical exemption which would exempt maintenance dredging of 10,000 cubic yards or less. In order to establish a categorical exemption for a class of activities, CEQA requires the Secretary for Resources to find that the exempted activities will not cause a substantial adverse impact on the environment. Testimony on this proposed categorical exemption and other proposed amendments to the State EIR Guidelines will be taken at a public hearing to be held in the early spring. Many projects which do not come under this exemption may nonetheless be found, on a case-by-case basis, to have no significant effect on the environment. Such projects would receive a negative declaration."

13. On page 54, at the end of the first full paragraph, insert:

"These recommendations should be understood to apply to those agencies permitting and commenting actions involving dredging only. Approximately 30 such applications were submitted during 1975 in the Bay Area. They are not intended to apply to a project which involves activities other than dredging."

14. On page 59, delete the second sentence of item 4 and insert "State agencies should establish criteria for minor projects for which review should be completed as a general rule in specified periods of less than 90 days. Emergency applications should be processed immediately."

15. On page 60, paragraph b, insert "If the time limit is exceeded," at the beginning of the first sentence.

16. On page 60, paragraph 3, delete "which comments are valid and".

17. On page 62, second line of paragraph A. 1., following "regions" insert:

"when in the judgment of the supervising agency, a principal agency is needed".

18. On page 65, amend paragraph VIII B. to be consistent with out comment number 8 above.


Secretary for Resources

PLEASE REPLY TO:
SACRAMENTO ADDRESS
ROOM 2070
STATE CAPITOL
95814
PHONE: (916) 445-1412

SAN FRANCISCO ADDRESS
2045 STATE BUILDING
350 MCALLISTER STREET
94102
PHONE: (415) 557-1437



SENATOR
MILTON MARKS
NINTH SENATORIAL DISTRICT

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CHILDREN AND YOUTH
HOUSING AND URBAN AFFAIRS

JOINT COMMITTEES
COMMUNITY DEVELOPMENT AND
HOUSING NEEDS
STATE'S ECONOMY

January 15, 1976

The Honorable Commissioners
San Francisco Bay Conservation
and Development Commission

Ladies and Gentlemen:

In 1974, as Chairman of the Senate Select Committee on the Maritime Industry, I became aware of the problems involved in processing of dredging permit applications by the many government agencies involved. Frequently, processing required many months to complete and was so complex as to be confusing at best and unreasonable, inconsistent and unfair at worst.

So I authored Senate Bill 2418 which asked you to coordinate dredging permit applications in the Bay Area on an experimental basis and to investigate the problem and recommend solutions which would clean up the process without jeopardizing any of the essential environmental protections afforded us by the agencies involved.

The report before you today is the culmination of your effort which has proven to be worthwhile in every respect. The experiment taught us that establishing a coordinating agency

alone is not the solution and may even complicate the problem for some applicants. It is your investigation that has been so valuable in identifying the reforms necessary to solve the problems. Your work assumes even greater value when we realize that the reforms you recommend need not apply only to dredging permits, but can be-and hopefully will be-used as a basis for the very necessary reform of the permit process in general.

While I commend you on the report before you, there are certain aspects of it with which I take some issue.

Because a process is only as efficient as its least efficient component, the State Lands Commission should be subject to the same time limits as other agencies and to sanctions for not adhering to those time limits. The role of the State Lands Commission as a property owner does not necessarily make the sanction of automatic approval inappropriate. (See page 25.).

While I agree that extensions of time limits for agencies to submit comments may be necessary because of a significant change in the project or because of the receipt of significant new information, I disagree that time extensions should be granted for a clear oversight. Excusing a clear oversight is excusing irresponsibility or incompetence and should not be allowed (See page 60.).

Most importantly, I would like to have seen your report emphasize more legislative action to implement your very fine recommendations. The Legislature initiated this study and will

January 15, 1976

Page three

evaluate it as a whole, and I plan to hold legislative hearings which will subject your recommendations and means of implementation to public review and discussion. Undoubtedly there is a need for legislative action to implement some of your recommendations.

While the enthusiasm of the Secretary of Resources to implement your recommendations administratively is essential, some of the reforms are beyond the Secretary's existing authority. For instance, the Secretary cannot change the time limitations now specified by law, nor can she authorize the establishment of new permit categories with different processing requirements for such categories as maintenance or minor permits unless the law so specifies.

Moreover, even for those reforms which can be implemented without legislative action, I would like to see the Legislature on record as requiring these essential reforms under this or any future administration. Because we are agreed on the goal of reforming the processing of permit applications without jeopardizing any essential environmental protections, I have every confidence that the Governor, the Secretary of Resources, and the Legislature will be able to work together to implement the recommendations you are considering today.

Once again, I wish to commend Claire Dedrick, Secretary of Resources, you and your staff, particularly Mr. Tom Tobin, on the very fine job you have done. You have proven that the trust vested in you by my bill was well founded.

Cordially,


Milton Marks



UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration

Western Region
450 Golden Gate Ave., Box 36073
San Francisco, California 94102

STATEMENT SUBMITTED BY THOMAS J. PATTERSON, JR., WESTERN REGION DIRECTOR, MARITIME ADMINISTRATION, TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION AT A PUBLIC HEARING ON THE REGULATION OF DREDGING, FINAL REPORT, HELD BY THE COMMISSION IN SAN FRANCISCO ON JANUARY 15, 1976.

It is a pleasure to have the opportunity to submit this statement to the San Francisco Bay Conservation and Development Commission on the Final Report on the Regulation of Dredging.

The Maritime Administration, Western Region, has followed the progress of the experimental coordination procedures and the development of this report. In reviewing the many drafts and by contributing information on commercial ports and dredging regulations in other states, we know that a great deal of research, time and effort has gone into this report. The regulation of dredging is a very complex and serious problem and deserves the close examination BCDC has given it.

There are three points I would like to emphasize to the Commission. They summarize what I consider to be the major points in the three chapters which make up the body of the Final Report: Chapter II, Problems and Analysis; Chapter III, Coordination Experiment Evaluation; and Chapter IV, Recommendation Implementation.

First, the description and the analysis of dredging regulation problems are excellent. The maritime industry in recent years has had to cope with a multiplicity of agencies and regulations with confusing and ambiguous requirements that have resulted in cumbersome procedures and permit delays. This report thoroughly describes the problems which exist with



dredging regulations. In many cases these same problems are found in other types of environmental regulations.

Second, the evaluation of the coordination experiment was in a way surprising. Many members of the maritime community involved with dredging believed the Marks Bill and BCDC's efforts in coordinating permit procedures would lead to the establishment of some type of permanent, formal, coordinating mechanism. Instead the report concludes that a rigid, formal coordination system is not the answer but changing existing agencies' policies and procedures and improving methods for interagency cooperation is justified and warranted. Recognizing, as this report does, that the creation of a new bureaucracy does not always solve regulatory problems is welcome and laudable. The maritime community has always supported the reform of dredging regulations rather than the promulgation of new ones. This was the concept behind the Marks Bill originally.

However, this leads to my third and final point--the importance of implementing the recommendations. The efforts of BCDC and all those who participated in developing this report will be wasted if these recommendations are not implemented. The maritime community supported the Marks legislation because it was aimed at producing more than a report but real improvements in the regulation of dredging. I would, therefore, urge the Commission in forwarding the Final Report on the Regulation of Dredging to the State Resources Agency and the State Legislature to emphasize the importance of putting these recommendations into effect as soon as possible, to strongly put forth the need for the Legislature to implement the review

of the progress in improving dredging regulations by early 1977, and to consider delegating this progress review to BCDC, the agency which in compiling this report has demonstrated its knowledge and expertise on this subject.

Because the recommendations made in the Final Report are generally directed toward changing policies and procedures of existing agencies, there is a clear danger these recommendations will be lost in the same regulatory maze they were intended to simplify and improve. A strong and definite commitment to review and determine the effectiveness of the implementation by BCDC will hopefully avoid this danger.

So, in summary, the Regulation of Dredging, Final Report, fully describes the problems with dredging regulations and proposes a comprehensive coordinated approach to simplifying the regulatory maze. We recommend that BCDC in forwarding this report to the State Legislature strongly emphasize the need for a knowledgeable State agency, such as BCDC, to follow up and evaluate the progress of implementing the report's recommendations.

Thank you for this opportunity to express the Maritime Administration's views on this subject.



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Marine Affairs and Navigation Conference

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STATEMENT ON THE REGULATION OF DREDGING REPORT
to
San Francisco Bay Conservation and Development Commission
by
Robert L. Langner
January 15, 1976

The Dredging Committee of the California Marine Affairs and Navigation Conference has reviewed the final (January 1, 1976) version of The Regulation of Dredging developed pursuant to S. B. 2418 (the Marks Bill). We commend the BCDC staff for an excellent job of defining, categorizing and presenting the multi-faceted problems which face all of us involved with dredging.

While the report will serve to define the problems created by and associated with dredging regulations, agencies and applicants alike will continue to suffer the problems until the recommendations in the report are implemented. We fully support and urge early action on the recommendations.

For the purpose of allowing early attention to specific problems, we would like to emphasize and elaborate on the following sections of the report:

1. p. viii: "Each agency should establish and adhere to clear criteria for decision-making, and time limits for processing an application should be more rigorous. Relations among State agencies and between State and Federal agencies can be improved, and "principal agencies" should be designated to serve as the focal point of all State dredging permit activities."

COMMENT: We regard these statements as descriptive of the heart of needed reform; probably a majority of our problems fall into these areas with the rest due to technical criteria.

OFFICERS AND DIRECTORS

K. C. (KRIS) KLINGER, *President*
Ventura Port District

CAPT. THOMAS R. EDDY, *Vice President*
Richmond Port Commission

VICTOR ADORIAN, *Treasurer*
Los Angeles County

ROBERT LANGNER
Executive Director and Secretary

FRANK C. BOERGER, *Consulting Engineer*
CARL BROWER,
Crescent City Harbor Commission

WILLIAM L. DICK,
San Diego Unified Port District
BOB HOFFMASTER, Port of Long Beach
EDWARD MILLAN, Port of Hueneme
J. WARD McCLELLAN,
Moss Landing Harbor District

WESLEY McCURE, City of San Leandro
LACHLAN (LOCK) RICHARDS
Lock Richards & Associates
VICTOR SAUER, Contra Costa County
Department of Public Works
PAUL SOTENSEN, Port of Oakland
THOMAS T. SOULES,
San Francisco Port Commission
LAWRENCE WHITENECK, Port of Los Angeles

2. p. 4, ¶ 2: "...complexity and delay grew not by agency design but because concern with resources management and environmental protection has increased the regulations governing dredging. Thus, although the regulatory process serves the goals set forth by the law, it too often does so in a way which may appear time-consuming and confusing."

COMMENT: We would characterize the situation perhaps less euphemistically and more accurately as follows:

- 0 No single source of blame can be isolated.
- 0 The regulatory process does not always serve all the goals set forth by law; in fact, it can be shown frequently as counterproductive to the intent of law.
- 0 The process not only appears time-consuming and confusing, IT IS.
- 0 Complexity and delay might not have grown by agency design, but they certainly were not decreased by agency design either.

3. p. 10, ¶ 2(bottom): "Because of the different statutory interests of the agencies, it is not reasonable to expect them to always reach identical decisions."

COMMENT: This is very true and raises a key issue: with single-purpose agencies legitimately reaching different decisions and holding either statutory or de facto veto authority, who is to render the ultimate decision (in the interest of the general public) and how?

4. p. 18, #4: "Duplication of public hearings".

COMMENT: The fact that several different agencies must hold independent public hearings and issue (or require an applicant to issue) independent public notices for the same project seems to us to epitomize the worst aspect of mandated but uncoordinated bureaucracy. We note, for example, that even though complete information about a dredging project is given to all who request it by the Corps in their Public Notice mailing, and often additionally through BCDC mailings, the Regional Water

Quality Control Board (by law) requires an applicant to publish a similar public notice in an appropriate newspaper at his own expense - from \$50 to \$100 in most cases. The Board must wait 30 days for responses to this notice before taking any further action. According to the Board staff, it is very rare that a response to such a notice is received. We concur with recommendation IX on page 66 to eliminate such duplication.

5. p. 20 (top): "In some cases, all permits can be secured within 6 weeks, while in other cases it may take more than 6 months."

COMMENT: We're very interested in actual figures on time consumed in obtaining permits because it represents delay, a period of uncertainty and costs. We have no knowledge of any dredging project recently permitted within such a short time as 6 weeks and we do not believe it would be possible. In our experience, required permits for an average maintenance dredging project can be obtained by a person with a reasonable knowledge of regulatory procedures in about 6 months. Statistics compiled by the BCDC staff for projects with all permit actions completed which were handled by the BCDC coordinator (appendix H) indicate that 45% of the projects required 6 months or more. A study by our Committee of Corps records for the period 1972-1974 inclusive indicates that the average Corps processing time (largely dictated by other agencies) exceeded 200 days alone; this figure does not include time required to obtain local and some State approvals. It would appear that the BCDC coordinator in fact succeeded in reducing overall permit processing time.

6. p. 21 (top): "... the actual time spent in reviewing an application for completeness, processing or commenting on the project, and preparing a permit document if one is to be granted, is very brief."

COMMENT: We would like to expand and emphasize the significance of this finding. While an application might require only a few hours of actual attention, it was found that the application frequently remained at an agency for weeks or months during which

the actual work hours were expended. We have always wondered why there should be such a large discrepancy between work time and processing time; although we have never found a satisfactory answer, the BCDC report has enlightened us about the actual times involved. When we queried one agency staffer about this discrepancy, he responded that it took three weeks to get a one paragraph response through the typing pool.

7. p. 24, P 1: "As a general rule, the Corps will wait well beyond the close of the Public Notice period for comments by important State agencies such as Fish and Game."

COMMENT: In fact, the Corps is REQUIRED to wait not only "well beyond the close of the Public Notice period" for such comments, they must wait until such comments ARE received, no matter how long it takes.

8. p. 54: "Formalization of Policies and Procedures".

COMMENT: We strongly urge adoption of as many administrative processing procedures as possible. Some agencies, notably the State Lands Commission, require almost every project, no matter how trivial, to come before the Commission for approval. Such approvals are generally very time consuming, requiring long lead times for access to crowded agendas at infrequent meetings, much staff work to prepare presentations and considerable time and expense for applicant appearances at such meetings.

9. p. 56: "Time Limits".

COMMENT: A 90 day time limit on permit actions with automatic approval is proposed. We see no reason, based on the findings of the BCDC report, why more than 30 to 45 days should be required in most cases. We believe tighter time limits with the automatic approval condition will be conducive to streamlining agency processing procedures and actions. While up to 90 days may be required legitimately in very complex projects, we would like to emphasize the statement on page 64 that "the time limits are to be considered maximum limits rather than normal operating goals."

We note that the State Lands Commission is effectively to be exempted from the time limits. We would concur if a complex lease, trespass or other property issue is involved, but we believe excusing this agency for any other reason would weaken needed reforms and be inconsistent with the other recommendations in the report.

With regard to time consumed by multiple commenting opportunities by an agency, we recommend that comments be developed once only with copies distributed simultaneously to all agencies as well as the applicant. We have heard many complaints from various agencies that they either did not receive or were unable to obtain necessary comments from other agencies and so delayed their own processing.

11. p. 63, #7: Topic: Define, through regulations, the terms "major", "minor", "insignificant" and "emergency".

COMMENT: This would clarify many misunderstandings and inconsistent approaches by the various agencies.

12. p. 64, #10: Topic: Resolution of conflicts.

COMMENT: Now, when one agency approves a project and another disapproves, or when one agency interprets another's criteria differently than the originating agency, it is left to the applicant to resolve the two positions. This is an unacceptable situation; assistance in conflict resolution would be warmly welcomed by applicants.

We hope the foregoing comments will be useful in implementing the recommendations, which we hope will proceed as soon as possible. We offer our assistance in the implementation process.

Again, we wish to congratulate the BCDC staff for an excellent report.

STATEMENT OF F. R. HENREKIN,
INDUSTRIAL DEVELOPMENT CONSULTANT,
SOLANO COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Commission Meeting, January 15, 1976

Mr. Chairman, members of the Commission, my name is Ron Henrekin;
I'm with the Solano County Industrial Development Agency.

The welfare of our County is highly dependent on dredging; we have long suffered and made excuses for all the problems associated with dredging regulations. Expansion of existing industry and development of new industry, like Dow, in our County is dependent largely on adequately dredged channels. One of our biggest problems - as well as that of industries in our County - is the uncertainty and risk caused by the regulations.

I'm delighted to see your report because it pinpoints the problems we have experienced - now, with this analysis - the problems are out in the open so that they can be dealt with. I congratulate your staff for a job well done.

I would like to stress two of the points made in your report because we consider them very important:

1. The establishment of time limits and the automatic approval condition are absolutely essential. Applicants have to abide by these conditions - if an applicant misses a deadline, that's too bad because it's his fault and he must live with the consequences - so why should agencies be treated any differently? Time constraints and automatic approvals will serve to "cut the fat" out of processing, increase efficiency and reduce delay and uncertainty. If I recall correctly, BCDC has such conditions and they seem to work here.

2. There is a real need for publicly adopted and available policies and procedures for each agency. The conspicuous lack of such policies and

Statement of F. R. Henrekin
January 15, 1976

procedures is at the root of many problems. Formally establishing internal procedures will help agencies as well as applicants. As your report points out, some agency staff members are not sure about their own operating procedures (and this is quite understandable - since in many cases there are none); this situation cannot help but cause delay and inconsistent actions. Applicants need to know about these procedures before they start a project - not when they're halfway through one. A lot of misunderstandings and improper applications could be prevented and better planning undertaken if procedures were formalized and available. Also, better coordination agencies could be effected with less staff time being spent explaining the process for each application.

Finally, since the agencies are acting in the public interest, the public should know what the agencies are doing and how they are doing it. In fact, by publicly establishing procedures, the public may help provide for more practical and workable procedures.

Again, I am delighted to see your report and I commend your staff for their well-done work. I hope we can proceed to the implementation phase as rapidly as possible.

Thank you.

STATEMENT OF THOMAS G. BERTKEN,
CHIEF ENGINEER, PORT OF OAKLAND
Commission Meeting, January 15, 1976

"REGULATION OF DREDGING"

BCDC Report dated January 1, 1976
for BCDC Meeting of January 15, 1976

We are in general agreement with the report recommendations on Formalization of Policies and Procedures for the permitting and review agencies. We are especially pleased that some of the matters which have given us much difficulties in past dredging applications would be remedied under these recommendations. Under the existing procedures, there are no provisions to expedite emergency or small dredging projects. If we discover a high spot on the channel bottom or at a berth that constitutes a hazard to navigation, there are no procedures for speedy authorization to permit us to remove that obstruction. The report recommendations provide for emergency action.

Under the existing procedures, all dredging projects, large or small, new or existing, must undergo the same time-consuming process. The new recommended procedures will make provisions to segregate the large versus the small projects and permit certain applications to be handled administratively. In addition, the imposition of time limits on processing of dredging applications and the provision by the Resources Agency to include certain dredging work as categorical exemptions under the California Environmental Quality Act Guidelines are all positive steps toward streamlining the existing cumbersome process.

We cannot emphasize enough the need to place a reasonable time limit on the processing of dredging permits. The primary finding of the report is that the whole application process is bogged down due to two things: (1) Virtually unrestricted processing time and (2) no sanctions for delays (pages 21 to 26).

Statement of Thomas G. Bertken
January 15, 1976
Page 2

The report recommended a time limit of 90 days from the date of the application is found to contain sufficient information. The Marks Bill used 60 days. Frankly, we would like a shorter period. The study noted that the actual review time on an application by each of the various permitting agencies is somewhere between one to twelve hours - or less than 2 working days (page 21). The remainder of the time it's likely to be on someone's tray. Meanwhile some jobs will be set aside and additional costs experienced.

I wish to extend my appreciation to this Commission for undertaking this task, I wish to commend the BCDC staff for an excellent report.

PORT OF
FERRY BUILDING



CITY OF SAN FRANCISCO • JOSEPH L. ALIOTO, MAYOR
SAN FRANCISCO
SAN FRANCISCO, CALIFORNIA 94111 • TEL.: (415) 391-8000

January 14, 1976

COMMENTS TO THE BAY CONSERVATION AND DEVELOPMENT COMMISSION

Re: Regulation of Dredging, Final Report (Senate Bill 2418)

January 15, 1976 - BCDC Commission Meeting

San Francisco Bay and the Delta comprise one of the major waterways in the United States, facilitating transportation and commerce. In 1973, according to the U.S. Army Corps of Engineers, 56,146,483 short tons of waterborne commerce was reported to have utilized this waterway system. Significantly over 22 million of these tons were foreign trade.

The dredging of the navigational and berthside channels associated with the San Francisco Bay port system is the function of the U.S. Army Corps of Engineers and the respective ports.

The extent of the economic impact directly associated with the maintenance of these channels has been estimated by the Corps of Engineers as follows:

1. 20,400 jobs in the San Francisco Bay-Delta area are directly related to the waterborne transportation industry.
2. The payroll for the jobs directly related to the waterborne transportation industry is \$309 million.
3. Approximately 7,800 jobs in the region have been identified in export manufacturing employment.
4. The total port investment - military and civilian - in the Bay-Delta area is nearly \$2 billion.
5. 4,781 vessel trips (1973) with ships of greater than 25-foot draft pass through the San Francisco Bay.

The navigational channels required for present day operations are maintained by over 20 separate dredging operations conducted by the Corps of Engineers in the Bay and Delta region. The importance of this dredging is noted in the fact that if maintenance dredging is discontinued, it is estimated that the existing channels will revert to lesser depths. For example, in the San Francisco Harbor, the Main Ship Channel is at an existing depth of 55 feet; the original condition of this channel in 1915 was 34 feet. If the channel is not maintained it would revert to a 28'-34' depth, and thereby making this channel useless to the needs of the present day maritime industry.

Similarly, as the channels entering into a port area must be dredged to accommodate the steamship traffic, so must the respective ports provide maintenance dredging along their berth-side facilities. To that extent, the Port of San Francisco dredges approximately 500,000 cubic yards of material annually.

The regulation of this maintenance dredging is described in detail in your report on the Regulation of Dredging. Many of the problems the Port of San Francisco faces in obtaining the necessary permits are also clearly outlined and I will therefore not comment on them specifically.

The problems the Port of San Francisco faced in acquiring the necessary permits for dredging are not unique to this particular port, nor are they specific problems of any one agency, nor circumstances that can be immediately remedied.

Prior to the enactment of Senate Bill 2418, the major problem facing any person with respect to dredging was in identifying the problems.

This fact has been overcome by this report on the Regulation of Dredging prepared for the Resources Agency by BCDC. The report must be commended for its concise and excellent synopsis of problems facing public agencies and persons with respect to dredging.

The Port of San Francisco would urge that this report be approved and adopted by the Resources Agency, and that this agency monitor the implementation of the recommendations made by the staff of BCDC. It is further recommended that any legislative changes required with respect to State agencies' roles in dredging be submitted to the Legislature for this session, and that the recommendations to memorialize Congressional action in this field be carried out at once.

The fact that many agencies review and process a permit application does not in itself have to be a problem. It is accepted today that certain regulations and environmental constraints are required for dredging and land fill. In the past these regulations and constraints have never appeared in a workable form. Therefore, the need to formalize criteria, policies, and procedures in the California Administrative Code would indeed be a great step forward.

One of the primary reasons for the enactment of Senate Bill 2418 was to get other State agencies to conform to an established time limit for reviewing permits, similar to BCDC's ninety days. At that time, proposed time limits appeared unrealistic. Your recommendation to amend the Porter-Cologne Act to reduce the existing time limit for applications for waste discharge is supported by the Port of San Francisco. Failure for an agency to act within a time limit established should result in that agencies' permit being granted.

I can only conclude by urging the respective State agencies to follow the conclusion of this report:

" . . . recommendations that the BCDC as the study agency proposes (may) require some State legislative action. Most can be implemented immediately by the regulatory agencies themselves without legislative action. Change is always difficult, but the pressures today are strong for a change in excessive and unnecessary regulations. If the changes are made haphazardly, the results will be unpredictable and possibly harmful to the environment we all want to protect. The approach proposed here will simplify the regulatory maze and speed application processing without undue disruption of the affected agencies' other activities or jeopardizing the critical protection of natural resources."

Mr. Chairman, members of the Commission, my name is Marin Matosich. I represent the CMPHA which includes recreational boaters. [STATISTICS]

I would like to second what Bob Langner said and add a few points about recreational boating.

If we're going to have recreational boating on our Bay, we're going to have dredging. But we can't continue to have the kind of regulations which cause the problems identified in your report.

I say this because these problems have become almost impossible, and in many cases impossible, to overcome. We don't have experts with a lot of time to wade through the paperwork and all the conflicts that develop along the way. Marinas and recreational facilities simply cannot support all the costs and full time personnel needed to cope with all the regulations. Just look at the time flow charts in appendix H of your report. The permit process is so complex and confusing that 68% of the applicants had to re-submit applications more than once and 32% three times. If the Port of San Francisco, which has been dredging the Bay a long time, and which has its own dredge and expert staff, had to submit their last application three times, what do you think happens to a recreational marina administered by a group of volunteers? We desperately need simplified procedures, we need to know what they are and we need specific time limits within which we and the agencies have to operate.

So, if we're going to have recreational boating on our Bay, we're not only going to have dredging, we're going to have vastly simplified and more accountable regulations. If we don't implement the recommendations in your report soon, marinas, whichever ones are still operating, will be forced to raise their rates out of the reach of most of the boating public just to cover the costs of coping with the regulations.

Again, I wish to commend the BCDC staff for tackling this problem - Now, let's move to implement your recommendations.

First, I would like to comment briefly on the scope and ramifications of this report. Since we have been closely involved with this effort from the drafting of the Marks Bill, we believe we can address this matter.

Regulatory problems are ubiquitous and increasing - as evidenced by the many articles and commissions recently established to deal with these problems. It is our belief - and this was brought out at the hearings on the Marks Bill - that any attempt to deal with all regulatory problems on a frontal basis would result in frustration. However, it was recognized that many regulatory problems are similar in different sectors and in different geographical areas.

In order to have a good chance of isolating and analyzing the problems, it was decided to place only the dredging sector in the San Francisco Bay area in a fishbowl. The results are in this report - which indicates the technique worked.

We have had many inquiries from other sectors in other areas about this report and we believe the reports findings and recommendations can and should be applied to other sectors and areas.

Memorandum

To : Tom Tobin
BCDC

Date: November 5, 1975

From : Department of Fish and Game -- Region 3

Subject: Draft Recommendations on Regulations of Dredging

RECEIVED
NOV 11 1975
CALIFORNIA DEPARTMENT OF FISH AND GAME
& DEVELOPMENT COMMISSION

Subsequent to our meeting of October 24, 1975 in Yountville, we have reviewed the proposed recommendations section of your agency's Report on Regulations of Dredging in greater detail and offer the following comments for your consideration.

We are concerned that recommended time limitations for commenting agencies may be unnecessarily restrictive. Paragraph III 2 f emphasizes a need for establishing time limits which provide sufficient opportunity for agency action. This should also apply to commenting agencies.

Our understanding is that you propose to have permit granting agencies act on applications requiring public hearing within 90 days of filing a complete application; those handled administratively, 45 days. Commenting agencies, on the other hand, would be required to comment within 21 days of the request for comments when subject to public hearing and 14 days otherwise. We believe these limitations afford considerable contingency time for the permitting agency but seriously limit a commenting agency's ability to respond. We recommend these comment limitations be extended to 28 and 21 days respectively with the option of a mutually agreeable extension if additional field and/or literature investigations are necessary.

We believe your recommendation #2 on page 5 relating to failure of an agency to comment within proposed time limits is unduly restrictive and contrary to provisions of the Fish and Wildlife Coordination Act. This Act requires the Corps of Engineers to consult with the U. S. Fish and Wildlife Service and the State agency having the responsibility for fish and wildlife resources prior to granting, in this case, a dredge permit. Your proposed restriction, therefore, would effectively preclude such cooperative efforts and seriously compromise the intent of the Act. We could not accede to a provision that barred us from commenting at the Federal level simply because we had not commented at some previous time.

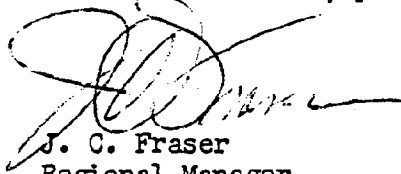
Of further concern, is your recommendation that agency comments be consistent throughout the review period. We certainly agree that an agency should carefully assess all pertinent information before determining its position.

November 5, 1975

However, in commenting to various regulatory agencies, comments may not contain all of an agency's concerns due to the limited regulatory responsibilities of the permitting agency. In some cases new information or considerations come to light which may justify a revision in an agency's position.

We concur with your suggestion that the "letters of permission" form of approval be expanded. However, we believe that "letters of permission" should not be used on controversial projects even though there has been a prior extensive state regulatory program. Also, the regulatory program's effectiveness and relationship to possible project impacts should be carefully weighed before using "letters of permission" on major or controversial projects.

Thank you for soliciting our comments on this subject. If we can be of further assistance, please let us know.



J. C. Fraser
Regional Manager
Region 3

cc: Environmental Services Branch
L. Frank Goodson, Project Coordinator
Resources Agency

Memorandum

RECEIVED
DEC - 3 1975

The Resources Agency of California

To : Mr. Charles R. Roberts
Executive Director
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue, Room 2011
San Francisco, California 94102

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Date : November 28, 1975

Subject: Proposed Dredge
Application Regulations

From : Department of Navigation and Ocean Development

On November 14, members of my staff met with Tom Tobin to review and discuss the proposed report on recommendations for the regulation of dredging being prepared by BCDC. It was suggested that we submit a statement to you expressing any concerns or recommendations the Department may have on these regulations, as well as a Department policy statement on dredging. I have attached such a policy statement.

DNOD fully supports the efforts to accelerate the time for processing dredging applications consistent with safe environmental practices.

We have no specific comments on the proposed regulations, but throughout there are places where terms should be defined and/or clarified in the context of which they are used. This was discussed with Mr. Tobin and he has made note of them.

I believe there should be a provision for all concerned agencies to have an opportunity to review any "late" comments of another agency. This pertains to proposed regulation I-B-iii-b.

Thank you for the opportunity to comment.



FRANK TORKELOSON
Acting Director

Attachment

RECEIVED
DEC -3 1975

DREDGING POLICY STATEMENT

DEPARTMENT OF NAVIGATION & OCEAN DEVELOPMENT

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

The Department of Navigation and Ocean Development recognizes that dredging is a necessary requirement for the establishment and maintenance of marinas, ports, and navigable waterways. Further, the Department recognizes that these marinas, ports, and waterways provide income and job opportunities for thousands of people in the state and nation. Needless to say, dredging has a major impact on the economic well-being of the state and the continued recreational and commercial uses of the coastal and inland waters. Therefore, consistent with good environmental practices, all dredging projects should be evaluated with regard to short and long-term advantages and disadvantages, including economic, financial, engineering, and environmental factors.

The Department encourages the continued research to mitigate any adverse physical or toxicological effects upon the environment resulting from dredging, and also the possible use of dredging spoils as a resource to be placed in areas void of flora and fauna.

INTERNAL MEMO

RECEIVED
DEC - 1 1975SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

TO: State Water Resources Control Board FROM: Los Angeles Region

DATE: NOV 26 1975

SIGNATURE:


RAYMOND M. HERTEL
Executive OfficerSUBJECT: BCDC Regulation of Dredging
Report: Tentative Recommendations
(11/5/75)

We have reviewed the tentative recommendations under consideration for the Regulation of Dredging Report being prepared by the San Francisco Bay Conservation and Development Commission.

The recommendations contain an item that is grossly in conflict with existing regulations concerning time limits for action on dredging permits, as well as other items that are not consistent with our views on dredging regulation. We are writing to express these views and to urge that any SWRCB response take issue with the specific recommendations mentioned below.

- 1) Recommendation Item I.B.b. (page 3): "Time limits should be specified as follows: i. Permit granting agencies shall act within 90 days of filing a complete application, etc."

We are concerned that the recommended 90-day time limit for action on a (dredging) waste discharge application will be in conflict with existing statutory requirements, namely, Section 13264(a)(2) of the Water Code, which states that a discharge may not be initiated prior to 120 days after compliance with Section 13260 (filing of a complete waste discharge report).

The proposed recommendation would require an amendment to Section 13264 (a)(2) providing an exception in the case of certification of dredging applications. We do not feel that the processing of waste discharge requirements with the attendant time constraints of preparation, circulation, publication, and adoption by Regional and State Boards can always be achieved in less than 120 days. Although we generally manage to keep well within this maximum time limit in processing dredging applications, it should be retained at its present duration to allow for those cases where additional time is required.

- 2) Item I.E.7 and III.A.1. (pages 7 and 10): A categorical exemption for maintenance dredging or new dredging of 10,000 yards or less is proposed, unless significant adverse impact may be anticipated.

We strongly oppose the setting of arbitrary exemption limits for dredging projects. Waivers of certification for minor projects should continue to be granted on a case-by-case basis.

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- 3) Item IV (page 11): ". . . each agency should have clear policy guidelines and administrative regulations which are formally and publicly adopted."

Item IV B (page 12): "All agencies should formally adopt policies on dredging."

We believe that Regional Board administrative guidelines on dredging certification protocol are all that are necessary to supplement present practices. There is no need for a general, statewide dredging and dredge spoil control policy.

cc: ~~San~~ Francisco Bay Conservation and Development Commission
California Regional Water Quality Control Boards

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD—
SANTA ANA REGION

INDIANA AVENUE, SUITE 1
RIVERSIDE, CALIFORNIA 92506
PHONE: (714) 684-9330

RECEIVED
DEC - 8 1975

December 4, 1975

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Mr. L. Thomas Tobin, Staff Engineer
San Francisco Bay Conservation & Development Commission
30 Van Ness Avenue
San Francisco, CA 94102

Dear Mr. Tobin:

Thank you for providing a copy of the confidential draft of the staff report on "The Regulation of Dredging." The report contains some excellent suggestions regarding the need for proper coordination and prompt response to dredging proposals.

We have one basic suggestion--that you modify the proposed volumetric values at which a waiver essentially would be granted. The value you suggest is probably valid for San Francisco Bay, but not necessarily relevant for our much smaller bays. We suggest instead that each major agency be required to develop a volumetric value for such a possible waiver provision.

This Board would possibly disagree with your introduction where you state "Moreover, new dredging projects almost always require maintenance dredging on a regular basis." This would indicate to us that either the original project was poorly designed or that erosion-siltation controls were not being diligently exercised in the drainage areas tributary to the project.

The report states on page 7 "The Regional Water Quality Control Boards and the State Water Resources Control Board derive some water quality control authority from the Federal Water Quality Control Act." We do not believe this is true. These boards derive their authority from the State Water Code and the State Administrative Code.

The report's suggestion that if a specific deadline is not met the permit is automatically granted (page 15) should be upon the condition that the proponent has provided an acceptable application.

An item not covered in the report is the need for more information on correct dredging procedures, and especially that phase concerning spoils disposal.

Thank you for the opportunity to comment.

Sincerely,

David J. Zasadzinski
for John M. Zasadzinski
Staff Engineer

JMZ/ps



DEPARTMENT OF THE NAVY
WESTERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
P.O. BOX 727
SAN BRUNO, CALIFORNIA 94066

IN REPLY REFER TO:
09BEA:RTR:lm
DREDGING/BCDC

DEC 10 1975

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Mr. Charles Roberts, Executive Director
San Francisco Bay Conservation and Development Commission
30 Van Ness Avenue
San Francisco, CA 94102

Dear Mr. Roberts:

Thank you for your letter dated November 28, 1975, transmitting a draft of "The Regulation of Dredging" dated December 5, 1975, and inviting comments.

The draft has been reviewed and several recommendations and comments have been indicated in the margins of the enclosed copy. Particularly significant questions or comments are as follows:

1. The fact that essential Navy dredging accounts for about one-tenth of all annual maintenance dredging in the San Francisco Bay Area is not indicated on the location map in the introduction or elsewhere in the study. It is requested that the report map and narrative discussion clearly show the significant proportion of Bay dredging performed for U.S. Navy defense-oriented purposes.
2. How will the procedures, as outlined in the Federal Register by both EPA and the Corps of Engineers, for the Section 404 (a) and (b) of the Federal Water Pollution Control Act (FWPCA) amendments of 1972, impact on the coordination of agencies within the State, as well as between the State and the Federal Government? It is believed that this matter should be discussed in the report.
3. In the introduction, no mention is made of the quantities of solids resuspended in the Bay system by wind and wave action. This figure is in the Corps of Engineers' study of San Francisco Bay, and is very significantly larger than the eight to ten million cubic yards brought in annually by the Sacramento and San Joaquin River systems. It is requested that this natural occurrence be mentioned and thereby brought to the attention of the report users.

The opportunity to review and comment on your draft report is appreciated. Mr. Richard T. Russell, P.E., (415) 871-6600, extension 2603, is available to assist with any questions your staff may have.

Sincerely,

Copy to: (w/o encl)
U.S. Corps of Engineers San Francisco District
Environmental Protection Agency, Region IX

P. J. PARISIUS
Commander, CEC, USN
Environmental Program Officer

Santa Clara Valley Water District

5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118
TELEPHONE (408) 265-2600



December 23, 1975

Mr. L. Thomas Tobin
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Dear Mr. Tom Tobin:

We have reviewed your report, "The Regulation of Dredging" and we concur with the recommendations contained in it. We wish to clarify that our agency's role with respect to dredging activities is that of (1) a permitting agency (under our own Ordinance 74-1), (2) a commenting agency (with respect to proposals referred to us by B.C.D.C. and others), and (3) an agency which from time to time comes under B.C.D.C. regulation when we propose our own dredging projects.

Thank you for the opportunity to comment on the report.

Sincerely,

John L. Richardson
Head, Project Development Branch
Design and Construction

RECEIVED
JAN 20 1976

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

January 19, 1976

Mr. L. Thomas Tobin
Staff Engineer
BCDC
30 Van Ness Ave.
San Francisco, CA 94102

Dear Tom:

You and the project staff responsible for the recommendations in "The Regulation of Dredging" report are to be commended for a most comprehensive and effective analysis of and solution to the dredging regulation problems in the Bay Area.

Due to other project commitments I have not been active in commenting on earlier drafts of the report, but this should not be construed as a lack of interest or support for the study. As you know, in our own report dealing with maritime development, the Bay Area Council was most concerned with the regulatory problems involved in all aspects of maritime development in the Bay Area.

This brings me to a question. Do you feel the procedures, recommendations and findings of your study would be applicable to maritime development permit situations other than dredging? We are most interested in seeing your recommendations implemented and would like to be kept informed of any progress or legislative activity on your very fine report.

Please let me know if we can be of further assistance.

Sincerely,



Ronald R. Brill
Projects Director

RRB:bs

The Council, established in 1945, is a private, non-profit organization involved in research and advocacy on such areawide public policy issues as environmental quality, economic vitality, transportation, and regional planning and government.

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& DEVELOPMENT COMMISSIONIn Reply Refer
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JAN 19 1976

San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue
San Francisco, CA 94102**"THE REGULATION OF DREDGING" BY THE SAN FRANCISCO BAY
CONSERVATION AND DEVELOPMENT COMMISSION - FINAL STAFF REPORT**

The following are the State Water Resources Control Board's
comments on the above subject.

1. The proposed recommendation would require an amendment to Section 13264 (a)(2) providing an exception in the case of certification of dredging applications. We do not feel that the processing of waste discharge requirements with the attendant time constraints of preparation, circulation, publication, and adoption by Regional and State Boards can always be achieved in less than 120 days. Although we generally manage to keep well within this maximum time limit in processing dredging applications, it should be retained at its present duration to allow for those cases where additional time is required. To require formalized procedures for time extensions would merely add further delays and additional confusion to the process of issuing waste discharge requirements for dredging projects.
2. We feel that specific criteria or standards for dredging projects are unworkable in light of the varied nature of such projects and the basic differences in the geographical areas where such projects are proposed. We feel that a uniform administrative procedure is sufficient to provide the necessary consistency and to inform applicants of the appropriate procedures to follow in obtaining waste discharge requirements for these projects.

San Francisco Bay Conservation
and Development Commission

-2-

3. On page D18 in the third paragraph, Los Angeles Regional Board is referenced. We believe that the San Francisco Bay Regional Board should have been referenced instead.

We request that these comments be considered when making your final decision.

W. R. Attwater

W. R. Attwater
Chief Counsel

cc: Los Angeles Regional Water
Quality Control Board
107 South Broadway, Room 4027
Los Angeles, CA 90012

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-3686

TO: All Commissioners and Alternates
FROM: Charles R. Roberts, Executive Director

SUBJECT: MINUTES OF MEETING OF AUGUST 21, 1975

1. Call to Order. The meeting of the San Francisco Bay Conservation and Development Commission was called to order by Chairman Joseph C. Houghteling, at 1:45 p.m., in Room 1194, State Building, 455 Golden Gate Avenue, San Francisco.

2. Roll Call. Present: Chairman Houghteling, Commissioners Boggess (represented by Alternate Cline), Brann, Chapman (represented by Alternate Searcy), Cuneo, DeFalco (represented by Alternate Freeman), Flertzheim (represented by Alternate Wolfe), Heller (represented by Alternate Becks), Henderson, Jacobson (represented by Alternate Stickney), Lollock, Northrop (represented by Alternate Golden), Ogawa (represented by Alternate Weinreb), Speck, Steinberg and Ward. Absent: Vice Chairman Watkins, Commissioners Aramburu, Bruno, Cooper, Feinstein, Harper, Kopp and Price.

3. Approval of Minutes of August 7, 1975. Mr. Roberts said the staff had received some changes. On page 5, paragraph 3, Commissioner Cuneo's question was inadvertently omitted. The following sentence should be inserted just before the last sentence in that paragraph: "Commissioner Cuneo asked how the staff felt about extending the time limit." On page 6, paragraph 2, add that Commissioner Jacobson voted against the motion. On page 11, third line from the bottom of the page, change to read: "of the decision of BCDC jurisdiction."

MOTION: Commissioner Cuneo moved that the minutes be approved as amended, seconded by Commissioner Lollock. The motion was unanimously approved.

4. Report of Chairman Houghteling

a. Introductions. Chairman Houghteling introduced Mrs. Dorothy Erskine, a long-time friend of those who have served on BCDC, who has been nominated as alternate to Vice Chairman Watkins, and L. Russell Freeman, alternate to Commissioner DeFalco of the Environmental Protection Agency.

b. Next Meeting. The Commission meeting for September 4, 1975, will be cancelled because information needed to hold public hearings on claims of exemption planned for that meeting has not been provided.

c. October 16 Meeting. Plans are to hold the October 16 meeting in Fremont so that the Commission can tour Leslie Salt facilities. There will be a tour of the Leslie Salt facilities in the morning, a no-host luncheon, and the regular meeting in Fremont that afternoon. At that meeting, the Commission will be briefed on the option between Leslie Salt and the Trust for Public Lands. Further information about reservations for this tour will be provided later.

d. Legislation. Chairman Houghteling said two bills of interest to the Commission have been amended recently in the Legislature. Assembly Bill 625 (Knox), the bill to create a regional planning agency, has been amended so that the absorption of BCDC in 1979 is not automatic. Instead BCDC has been moved into a section of the bill where its future role in the Bay Area scheme is to be studied, and a report is to be made to the Legislature in 1979. The bill has also been amended to require a referendum in June of 1976, putting the final decision on this regional agency up to the vote of the people of the Bay Area. The bill still has to go to

the full Senate, back to a conference committee, and if the Legislature is to act this year it will have to do so by September 15. There will be no further opportunity to report to the Commission on this bill, and at this point BCDC is not directly involved.

Commissioner Brann said at the hearing before the Senate Local Government Committee, a statement was made that Chairman Houghteling, speaking as the BCDC Chairman, approved AB 625. Chairman Brann said it should be noted as a matter of record that this Commission has not taken a position on AB 625. Chairman Houghteling said Commissioner Brann was correct, and he did not know who would have said that. He said that as a member of a committee of the Planning and Conservation League, he had said he would vote for approval of the bill if it had certain amendments, but he had not said this as BCDC Chairman. However, his main concern was BCDC, and he certainly agreed with Commissioner Brann that BCDC had taken no position on this matter.

Assembly Bill 1601(Wornum), the bill which would allow per diem for members of the Commission to a maximum of four meetings per month, has been amended again to restore the per diem to \$50 per meeting, which would be on a par with most other regional commissions. (This bill had been amended earlier, reducing the per diem to \$30 per meeting.)

e. Today's Agenda. Item 9.a. on the Agenda, the public hearing for a bike path in the City of Burlingame, has been withdrawn at the request of the applicant. This item was withdrawn from the agenda at the last meeting.

Alan R. Pendleton, Staff Counsel, said that the City of Burlingame has requested that the public hearing on its application No. 7-75, be put over again because Westbay Community Associates, a group of investors which claims certain rights to lands immediately bayward of the proposed project, has interposed an objection with regard to title; this may affect the Commission's determination since there is an area involving fill. The applicant expects to resolve the issue in the near future. Chairman Houghteling asked if the applicant agreed to extend the ninety-day limit. Mr. Pendleton said they had.

5. Report of Executive Director.

Administrative Permits. Mr. Roberts said the administrative permits filed since the last meeting were reported to the Commission in a memorandum dated August 18, 1975, and briefly described some of the projects involved. Chairman Houghteling asked if there were any questions and there was no response.

6. Further Commission Consideration and Possible Adoption of Resolution on Proposed Regulations for Coordinating Dredging Applications. Philip Weismehl, staff attorney, said that on August 7 the hearing was held on the regulations proposed for coordination aspects of Senate Bill 2418; at that time there was no testimony offered from the audience. The staff received a request that the comment period be held open for one week so that written comments could be submitted. During that week a letter was received from the Alameda County Flood Control District, copy of which has been distributed to the Commissioners. Its suggestions have been dealt with to the extent possible, and are reflected in changes in a memorandum dated August 18, sent to the Commissioners. Mr. Weismehl summarized comments and asked that the Commission approve the resolution which will be sent to Secretary of Resources who has the final authority to adopt the regulations.

Chairman Houghteling asked if there were any comments on the regulations as proposed, including the amendments. There was no response.

MOTION: Commissioner Henderson moved that the regulations proposed by the staff (in memorandums of August 18, and August 20) be accepted, seconded by Commissioner Becks. The motion was unanimously approved.

Chairman Houghteling asked if there were any comments on the proposed regulations as amended. There was no response. Commissioners Henderson, Steinberg and Ward, and Alternates Searcy, Golden and Freeman, said they had read the minutes of August 7, and were prepared to vote.

MOTION: Commissioner Henderson moved that the proposed regulations as amended, and the resolution be approved, seconded by Mrs. Stickney. Chairman Houghteling asked if there were any comments on the motion. There was no response. He said a "yes" vote would be in favor of the motion, and a "no" vote would be against it. The roll call vote was as follows: Yes: Commissioners Cline, Brann, Searcy, Cuneo, Freeman, Wolfe, Becks, Henderson, Stickney, Lollock, Golden, Weinreb, Speck, Steinberg, Ward, and Chairman Houghteling. The motion was approved 16-0.

7. Public Hearing and Commission Consideration of the First Part of the Study on Administrative Procedures Affecting Dredging. This part of the background report describes the reasons for dredging and its regulation, and the regulatory framework (procedures and powers). The Commission will be asked to adopt findings, which will be part of a final report to the Legislature as required by SB 2418.

L. Thomas Tobin, Staff Engineer, said in 1850, the year of California statehood, the State took over ownership of certain tidelands. This was perhaps the first time that California got into the regulation business as far as dredging was concerned. Since that time there have been many laws which affect dredging: in 1899 the Federal Rivers and Harbors Act; in 1965 the McAteer-Petris Act creating BCDC; in 1967 the Porter-Cologne Act dealing with Water Quality; in 1967 the Federal Fish and Wildlife Coordination Act was implemented through a Memorandum of Understanding at the federal level, bringing new regulations concerning dredging; in 1969 the national Environmental Protection Act; in 1970 the California Environmental Quality Act; in 1972 the Federal Water Pollution Control Act; and in 1972 the Federal Marine Protection, Research and Sanctuaries Act. These laws addressed many different topics: ownership, land use, water quality, fish and wildlife resources, navigation, environmental impact and interagency relations. They have something in common; they were all enacted independently without regard to the overall pattern of regulation and they created agencies with overlapping interests. In short, about twelve regulatory agencies were created in the Bay Area, and applicants are still learning how to live with this relatively new body of legislation and new interpretations.

Mr. Tobin said the first part of the study has been prepared with the full participation of the agencies involved, the BCDC Advisory Committee, and a Special Advisory Committee of twenty persons with special expertise in dredging. This public hearing is to consider the findings in the first part of the study. These findings are intended to support recommendations the Commission will be asked to make, perhaps in November, when the second part of the study is completed. The law (SB 2418) requires that the report be prepared by February 1. The report will be short, consisting of findings and recommendations--a format very similar to the Bay Plan. The report will be transmitted to the Legislature through the Secretary for Resources.

The final report will identify problems in the permitting process, make recommendations concerning efficient ways to expedite the process, propose future relations between state and federal agencies pertaining to dredging matters, and recommend legislation for statewide application of the procedures.

Mr. Tobin said not all dredging is conducted by the ports; one-third of the applications do come from ports, one-third from marinas, and one-third from those who wish to conduct public works projects. So dredging regulations affect private people, ports, county flood control districts, and county public works departments. We have also learned that not all projects are new and not all are very large; in fact, half the projects are less than 10,000 cubic yards in size. About sixty percent of the projects are what are called "maintenance" dredging. It is apparent to the staff that these smaller, recurring projects do not need the same level of scrutiny as the new, very large projects which may have a significant environmental impact.

Mr. Tobin gave highlights of the findings and said the laws and regulations which surround the dredging process are currently in a very dynamic state. Procedures are changing as are the areas of jurisdiction. In other words, the staff is trying to solve a problem that is changing.

Chairman Houghteling opened the public hearing on "Part I, The Regulation of Dredging."

Commissioner Cuneo asked if the Regional Water Quality Control Board recommendations had been taken into consideration. Mr. Tobin said they had, however, there was one major point which should be restated. The report says the Regional Water Quality Control Board considers only the effect of the dredging project on water quality, and this is not the case. The administrative regulations promulgated by the State Water Resources Control Board say that the Regional Boards are to take into account the environmental impact of factors other than water quality in making their decisions on waste discharge requirements.

Chairman Houghteling said he did not notice the Association of Bay Area Governments (ABAG) among the agencies an applicant must go through. Mr. Tobin said ABAG has A-95(e) review responsibilities when federal money is involved. The staff feels this is a review that occurs primarily during the planning period, not during the time that an application is processed.

Frank Boerger, Chairman of the San Francisco Bay Committee on Dredging for the California Marine Affairs Navigation Conference (C-MANC), said the committee was formed approximately two years ago because of the problems many people in the Bay Area were having with dredging permits, technical as well as procedural problems. The C-MANC Dredging Committee has been working in an attempt to develop a public awareness of the problems, so people could better understand some of the implications of the kinds of activities which were being promulgated by various regulatory agencies at both federal and state level. For example, the Committee had a conference last February, on Pacific Coast dredging matters, in which it identified all the facets of the problems and tried to come up with some suggestions on ways for improvement. He distributed copies of a recent editorial in the San Francisco Examiner which dramatized the problems created for a private firm by the number of agencies. It is a real problem for private firms, for ports, marinas, and for anyone who has to develop and maintain facilities on the waterfront. The Committee worked very closely with Senator Marks and his staff last year on the approach that BCDC is taking now.

Mr. Boerger said C-MANC has reviewed very carefully Part I of the report, and feels that the staff is to be commended on a report that portrays the problems so well; he said it presents many excellent questions which need to be answered. He emphasized that one of the fundamental problems, alluded to by Mr. Tobin, was that many laws have been passed and regulations adopted, based on those laws, but legislative and administrative people have not looked fully into the total implications. These actions have created tremendous requirements for expenditures of public and private funds because of duplication of effort. The action the Commission is now taking is an effort to retrace steps to find what can be done to eliminate some of the duplications. For example, some simple projects may be reviewed several times by the same agency. When a permit request is made to the BCDC and the Regional Water Quality Control Board, all the other state agencies have to look at both permits. The agencies may have to look at the same project again if an EIR is required, and very likely will have to look at it again when the Corps of Engineers Public Notice is issued for a Corps permit. If the Corps of Engineers requires an Environmental Impact Statement (EIS) at the federal level, the agencies may have to review that statement again. In terms of time and effort, this is very wasteful. This kind of system bears heavily on the small operators of marinas who must go through exactly the same procedure as for a major project. In summation, C-MANC agrees with the recommendations and the questions which have been asked, and offers its full assistance in trying to find reasonable answers to these questions, so that sensible recommendations can be made to the State Legislature.

Peggy Lang, Research Aide to Senator Milton Marks, said that Senator Marks regrets that his legislative schedule keeps him in Sacramento but had asked her to read the following statement: "As Chairman of the Senate Select Committee on the Maritime Industry, last year I became aware of the overwhelming bureaucracy involved in obtaining dredging permits throughout the State. As you know, dredging is essential to the maritime industry in keeping our shipping channels open. Dredging is also important for commercial fishing, boating and recreation, and a variety of other public uses of California's water resources.

"Despite the importance of dredging, the ports, marina operators and other applicants are faced with a permit procedure which is time-consuming and repetitive, at best, and is prohibitive, at worst. Applicants must receive approval from a minimum of six state and four federal agencies, each with differing but frequently overlapping authority and jurisdictions and with different requirements for technical information on which to judge the permit. Several of these agencies cannot act without prior approval of others, and time limitations on these agencies are non-existent, impractical or inconsistent. The Senate Select Committee on the Maritime Industry knows of projects that required over two years to process permit applications, and cases of thirteen to twenty months are not uncommon. Some smaller projects have even been abandoned because the permitting procedure was too lengthy and costly.

"All of the agencies with permitting or reviewing authority provide us with essential environmental protections, which we do not want to compromise. On the other hand, it seems unnecessary for one department to comment on a permit application five times. We wanted to come up with a procedure which would consolidate the red tape without compromising essential environmental protections. With this goal in mind, we sat down to write SB 2418 last year.

"We had hoped, at first, to write a bill to establish a standard time limitation by which all state agencies must act on a dredging permit application, to establish a standard application form and to establish a single lead agency on a

permanent, state-wide basis. We learned very quickly that this task was far too complicated to accomplish within the time frame of the legislative session and that we had better assign the job of untangling the bureaucratic ball and acting as an interim coordinator to an existing agency. Naturally, there was some disagreement over which agency to assign these tasks to, and the one agency upon which all parties could agree was BCDC. With BCDC in mind, I am happy to say that my bill, SB 2418, was enacted.

"BCDC's work as coordinator and the report before you today exemplify the reasons for the trust in BCDC. In a very short time, BCDC developed a standard application form and began acting as coordinator for dredging permit applications. The report on The Regulation of Dredging, Part I does a good job of describing the permit procedures and identifying its problems. I would particularly like to direct your attention to Chapter VI, Analysis and Findings, which is the core of this report.

"Now that BCDC has described and identified the problems, I am hopeful that your next report will provide us with some solutions. I am hopeful that we can reach our original goals of establishing a standard and reasonable time limitation by which state agencies must act on permits, establishing an on-going and statewide standard application form, and establishing a permanent and manageable coordinating process which will cut through the red tape without compromising essential environmental protections.

"I confess that I do not envy you this task, as I know it will be a difficult one. I hope the proposed solutions will be meaningful and effective; and I trust you will not hesitate to recommend a solution simply because it may require state Legislative action. I believe the Legislature and the Governor would give serious consideration to legislation which would provide us with reasonable means of cutting through red tape without jeopardizing environmental protections. I commend you and your staff, particularly Mr. Tom Tobin, on your first report. If this report is any indication of the quality of your next one, the proposed solutions should be excellent ones, and the intent of my bill will be accomplished."

Miss Lang said Senator Marks also asked her to call the Commission's attention to the fact that the problems of red tape and bureaucracy with permit applications apply not only to dredging. Throughout the state there are all kinds of permit procedures which are equally complicated. Senator Marks is hopeful that this bill and the work that BCDC is doing, will be the first step toward solving some of the other problems with other application procedures throughout the state. Ms. Lang added that some sort of provision for emergency permits should be included, which could be submitted to the Legislature with a possible recommendation for changes statewide.

Thomas G. Bertken, Chief Engineer of the Port of Oakland, said his comments were directed to the impact of existing regulations and procedures for dredging permits on the port industry in general, and the Port of Oakland in particular. He said the "Bay Plan" recognizes that the port industry plays a very vital role in the overall economy of the Bay Area and accounts either directly or indirectly for a major portion of the jobs and economic livelihood of Bay Area residents. There is no other single industry that is more important to the Bay Area's economic well being. Periodic maintenance dredging of channels and ship berths is necessary for the continued operation of the Bay Area port industry. Without dredging, ship channels and berths would silt up in a relatively short time and would not accommodate the ships presently calling at Bay Area terminals. Also, to accommodate the larger cargo ships now being built, ship channels and berths will have to be deepened and widened. Otherwise, the area's port industry will decline, with serious consequences to the Bay Area economy. It is not reasonable to assume that any regulations would be established

that would result in a sudden, drastic restriction of such an important economic activity. The more real danger is the gradual sapping of the economic vitality of the industry by delay and frustration involved in the regulatory procedures. The competitive position of Bay Area ports in relation to ports in the northwest and ports in Southern California has been seriously weakened as a result of delays in dredging projects and the uncertainty of securing dredge permits in a timely fashion. The time delays and the cumbersome procedures which presently exist with the processing of dredging permits have resulted in the waste of many thousands of dollars in public and private funds. Needless to say, this waste of funds should not be allowed to continue.

Mr. Bertken said the Port of Oakland would like to commend the BCDC staff on their fine report on the current status of the regulation of dredging, and supports the adoption of these findings. After adoption, the next logical step would be to implement the necessary changes which will guarantee an overall regulatory process for dredging which is fair, reasonable, efficient and yet responsive to our environmental needs. Mr. Bertken said the Port of Oakland pledges its continued support and cooperation in effectuating an efficient regulatory process for dredging permits which will eliminate the unfortunate wasting of public funds that occurs with present procedures.

Michael Cheney, Consulting Engineer, said he frequently has clients who want to dredge and he must advise them of the permit process. The clients usually look at him in disbelief when they learn the time and cost required. For example, on one small project for dredging 8,000 cubic yards, the client started applying for necessary permits last October, and is just now getting the last permits. The BCDC permit is about to expire, the client has lost the low bidder, and the project will cost three times what it would have cost five years ago. At least half of the increase is due to the regulatory process. He commended the staff for the reported findings which point out obvious weaknesses and problems. He said the problems are caused by too many laws, too many agencies involved, a lack of clear procedures, a lack of coordinated processing, inconsistent goals, and a lack of time constraints. The public interest is not really being served by the permit process. Practical solutions must be developed and implemented. The solutions will not be easy since they will require digging into well protected bureaucratic areas, but those concerned cannot afford not to find those solutions.

Michael Giari, of the Port and Intermodal Development Office of the Maritime Administration, said Thomas J. Patterson, Jr., the Regional Director of the Maritime Administration, was not able to appear to speak on the subject of dredging, but had prepared a statement which was distributed to the Commissioners. He said he would like to emphasize a few points which are important about the BCDC study. First, as an agency of the Department of Commerce, the Maritime Administration recognizes that dredging is necessary in order to maintain a proper channel bed for shipping in and out of San Francisco Bay and other ports in the United States. The Maritime Administration also has a role in port development that is mandated under the 1920 Merchant Marine Act. In this role it works closely with ports on problems nationwide. One problem which exists with all ports, is the problem of dredging, its regulation, and how to get it done. Here in the Bay Area and elsewhere around the country, ports are concerned about the overregulation of dredging with its lengthy and complex procedures that cause delays and increased costs. Since SB 2418 was enacted, and BCDC started to work as a permit coordinator and to study dredging regulations, the Regional office has supplied information on ports, the operation of ports and the dredging needs of ports. Currently it is conducting a survey with BCDC of other West Coast ports outside the State of California,

to find out if their problems are similar to those experienced here in the Bay Area, and what solutions are being attempted. He said Part I of the study is excellent and the Regional office plans to continue to work with BCDC on the completion of the study. When the study is complete, his office will assess the results in terms of impact on commercial ports, and hope to make the findings available, through the Department of Commerce in Washington, to the ports and other interested parties throughout the United States.

Jerry Van de Erve, Assistant Chief Harbor Engineer, Port of San Francisco, said the dredging of our waterways is vital to the overall economic well-being of the individual ports in the San Francisco Bay Area. Whereas dredging must be regulated through a permit process, there exists a general consensus among the maritime interests, the ports, and the regulatory agencies that such regulations must be in the interest of protecting the environment, while maintaining the economic fiber of our communities. This can only be done with a permit process that is a balanced one between the environment and the economy; that it not duplicative in nature; and that does not take months of paper work and delays to eventually get approval of what may constitute a routine maintenance dredging application. The Port of San Francisco is a major applicant in the area of maintenance dredging, dredging approximately 500,000 cubic yards a year from along our waterfront. This year, the Port has filed its yearly maintenance dredging permit for 500,000 cubic yards at a cost to the Port of some \$910,000. This maintenance dredging is vital to the Port's maintenance of berthside operations.

Mr. Van de Erve said the normal permit period for a routine maintenance dredging application for the Port of San Francisco is one year. This year the Port made its initial contact with the Environmental Protection Agency and Regional Water Quality Control Board in April of 1974, for dredging to occur in 1975. To date, the Port's application for this maintenance dredging is still in the process stage. This application is similar to ones that were filed and approved by these same agencies in 1973 and 1974. This application must go through a network of reviews and analysis as if it were an application for new dredging with major environmental impact. The Port of San Francisco—as well as other major maritime facilities or small craft harbors—cannot afford a waiting period of one year or more, to perform this type of routine maintenance dredging. Mr. Van de Erve said there are identifiable causes for these long delays. In some of the cases, applicants submit incomplete applications or poor dredging samples; some of the delay is on the part of the agencies due to inadequate staff, unclear regulations, and conflicting federal and state guidelines. But most important, some agencies can be asked to comment on the project as many as five different times in the usual four to twelve-month period during which the applications are considered, causing unnecessary work and allowing inconsistent comments on the same project. This type of review must be stopped.

Mr. Van de Erve said the following recommendations are offered to the report on "The Regulation of Dredging, Part I":

"1. A State and Federal system of permit coordination should be established for routine maintenance dredgings on a permanent basis to include:

- a. a requirement that each agency required to comment, review, or permit a maintenance dredging permit do so only once during the permitting process;

- b. the establishment of a permanent "Permit Coordinating Section" within the Bay Conservation and Development Commission;
- c. the permitting process must combine or remove such duplicative processes as public notices and public hearings on routine matters;
- d. letters of understanding be executed between State and Federal agencies having similar responsibilities so that State agencies are considered the "lead agency" in judging the impact of any project.

2. The environmental and economic impact of routine maintenance dredging projects be studied in conjunction with the Corps of Engineers' Composite Environmental Statement so as to determine if maintenance dredging can be categorically exempt from the requirements of the California Environmental Quality Act.

3. State agencies be granted the authority through necessary legislation to administratively approve routine maintenance dredging permits.

4. All available information relative to dredging be used to develop and maintain an overall analysis of the economic impact of dredging upon the economy of the local, regional, and state levels of government, and that such information be considered by all regulatory agencies with respect to the protection of the "public interest" of California."

Mr. Van de Erve said Mr. Soules, Port Director, and the Port staff agreed that the staff of BCDC should be commended for its efforts.

Chairman Houghteling asked if there were any others in the audience who wished to speak. There was no response.

MOTION: Mr. Golden moved that the public hearing be closed, seconded by Commissioner Speck. The motion was unanimously approved.

Chairman Houghteling asked if there was any comment by the Commissioners on the findings of the staff. There was no response.

MOTION: Commissioner Steinberg moved that the Findings of "The Regulation of Dredging, Part I," be adopted, seconded by Commissioner Henderson.

Chairman Houghteling asked if there was any discussion on the motion and there was no response. He said he would like to add his compliments to Mr. Tobin and his associates since everything the Commission has received in writing and in verbal testimony has been most complimentary about the work done. He also noted that AB 625, which is an attempt to coordinate various agencies, does not even touch the problem of the overlapping local, state, and federal jurisdictions. Regardless of what happens to AB 625, this problem would still be before the Commission.

Mr. Wolfe said the Corps of Engineers is very concerned about establishing both federal and state policy to which dredging applicants can respond. There is no doubt that there is a real morass that a prospective applicant must face in applying to both the federal and state agencies for approvals for maintenance dredging. One of the reasons is that there is no unified policy at either federal or state level on what an applicant must do in order to dredge.

Prospective policy is presently being "hammered out" at the federal level, between the Corps and the EPA, and with luck that policy will be filed in the Federal Register soon. The Corps is hopeful that this BCDC report will lead to a unified policy at the state level as well, which will streamline dredging procedures. He said he too would like to commend the staff on the way it is preparing the report, and as the Secretary of the Dredge Advisory Group, was well aware of the hard work the staff has done.

Chairman Houghteling asked if there were any other comments, and there was no response.

The motion to adopt the findings on the regulation of dredging was unanimously approved.

8. Further Commission Consideration and Possible Adoption of Revised Staff Recommendation on Procedures for Dealing with Historic Ships. George E. Reed, Staff Senior Planner, said this matter was the subject of a public hearing followed by extensive discussion at the last meeting. There is a memorandum that summarizes the comments made by the public and Commissioners at the last hearing, and the staff responses to those comments. He pointed out that the following typographical errors should be corrected in the staff memorandum: on page 5, the last word in the third line, "or" should be "and"; in part 2.(a) the last word, line 2, "or" should be "and".

Mr. Reed said the revised staff recommendation resulting from discussion at the public hearing in effect creates two classes of historic ships, where previously the staff recommended one. To do this the staff has recommended the creation of a class which is called "Historic Ships on Display." These would be ships or prototypes that have historic significance through having taken part in some significant event or period in maritime history. Such a ship would be on display because of its historical significance, and any fees charged for admission to the vessel should be only those required to enhance the quality of the ship or the event or period from which the ship derived its historical significance. Commercial activities aboard the ship or adjacent to it would be minor and of a nature designed to heighten a visitor's enjoyment of the ship. The other class of historic ships is as originally presented in the staff's recommendation at the last hearing, and would include ships which were constructed more than fifty years ago and which had a specific role as a prototype or as a participant in a significant event or period in the maritime history of San Francisco Bay. Staff recommends that these ships be permitted as small fills for improving shoreline appearance, or small fills for improved public access to the Bay, as provided in the McAteer-Petris Act and the Commission's regulations. Therefore the staff should be instructed to prepare the language of the regulations to be presented to the Commission, and the Commission should schedule a public hearing on the regulation changes.

Mr. Cline said he could not quite understand the reason for the two definitions, historic ships on display vs. other historic ships. He asked if historic ships on display have different rights. Chairman Houghteling said historic ships on display would be there primarily for historic quality; the entire ship would be for that theme. Other historic ships might have a restaurant or other commercial activity aboard, which puts them in a different category because a profit making activity is involved. The first category would be generally defined as a non-profit activity; everything that might be a cash flow would go back into maintaining the ship, or something associated with its historic period.

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California Legislature

Senate Select Committee on Maritime Industry

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CONSULTANT

PEGGY LANG
RESEARCH AIDE

ADDRESS ALL COMMUNICATIONS TO:
SENATE SELECT COMMITTEE ON
MARITIME INDUSTRY
ROOM 2044
STATE BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
PHONE: (415) 357-3137

21 August 1975

Statement to the San Francisco Bay Conservation and Development Commission on its report The Regulation of Dredging, Part I, August 1, 1975, pursuant to SB 2418 (Marks, 1974).

Ladies and Gentlemen:

As Chairman of the Senate Select Committee on the Maritime Industry, last year I became aware of the overwhelming bureaucracy involved in obtaining dredging permits throughout the State. As you know, dredging is essential to the maritime industry in keeping our shipping channels open. Dredging is also important for commercial fishing, boating and recreation, and a variety of other public uses of California's water resources.

Despite the importance of dredging, the ports, marina operators and other applicants are faced with a permit procedure which is time-consuming and repetitive, at best, and is prohibitive, at worst. Applicants must receive approval from a minimum of six state and four federal agencies, each with differing but frequently overlapping authority and jurisdictions and with different requirements for technical information on which to judge the permit. Several of these agencies cannot act without prior approval of others, and time limitations on these agencies are non-existent,

impractical or inconsistent. The Senate Select Committee on the Maritime Industry knows of projects that required over two years to process permit applications, and cases of thirteen to twenty months are not uncommon. Some smaller projects have even been abandoned because the permitting procedure was too lengthy and costly.

All of the agencies with permitting or reviewing authority provide us with essential environmental protections, which we do not want to compromise. On the other hand, it seems unnecessary for one department to comment on a permit application five times. We wanted to come up with a procedure which would consolidate the red tape without compromising essential environmental protections. With this goal in mind, we sat down to write SB 2418 last year.

We had hoped, at first, to write a bill to establish a standard time limitation by which all state agencies must act on a dredging permit application, to establish a standard application form and to establish a single lead agency on a permanent, state-wide basis. We learned very quickly that this task was far too complicated to accomplish within the time frame of the legislative session and that we had better assign the job of untangling the bureaucratic ball and acting as an interim coordinator to an existing agency. Naturally, there was some disagreement over which agency to assign these tasks to, and the one agency upon which all parties could agree was BCDC. With BCDC in mind, I am happy to say that my bill, SB 2418, was enacted.

BCDC's work as coordinator and the report before you today exemplify the reasons for the trust in BCDC. In a very short time, BCDC developed a standard application form and began acting as coordinator for dredging permit applications. The report on The Regulation of Dredging, Part I does a good job of describing the permit procedures and identifying its problems. I would particularly like to direct your attention to Chapter VI, Analysis and Findings, which is the core of this report.

Now that BCDC has described and identified the problems, I am hopeful that your next report will provide us with some solutions. I am hopeful that we can reach our original goals of establishing a standard and reasonable time limitation by which state agencies must act on permits, establishing an on-going and statewide standard application form, and establishing a permanent and manageable coordinating process which will cut through the red tape without compromising essential environmental protections.

I confess that I do not envy you this task, as I know it will be a difficult one. I hope the proposed solutions will be meaningful and effective, and I trust you will not hesitate to recommend a solution simply because it may require state Legislative action. I believe the Legislature and the Governor would give serious consideration to legislation which would provide us with reasonable means of cutting through red tape without jeopardizing environmental protections. I commend you and your staff, particularly Mr. Tom Tobin, on your first report. If this report is any indication of the quality of your next one, the proposed solutions

Statement to BCDC, 21 August 1975
Page Four

should be excellent ones, and the intent of my bill will be accomplished.

Thank you.

Sincerely,


MILTON MARKS

MM:pl

STATEMENT BY THOMAS G. BERTKEN
ON THE "REGULATION OF DREDGING"
(Presented at the Meeting of the
San Francisco Bay Conservation and Development Commission
on August 21, 1975)

My name is Thomas G. Bertken, Chief Engineer of the Port of Oakland. It's always a special pleasure to appear before BCDC since I spent some time here on the other side of the podium.

My comments are directed to the impact of existing regulations and procedures for dredging permits on the port industry in general, and the Port of Oakland in particular.

As is recognized in the "Bay Plan", the port industry plays a very vital role in the overall economy of the Bay Area and accounts either directly or indirectly for a major portion of the jobs and economic livelihood of Bay Area residents. There is no other single industry that is more important to our Bay Area economic well being.

Periodic maintenance dredging of channels and ship berths is necessary for the continued operation of our Bay Area port industry. Without dredging, ship channels and berths would silt up in a relatively short time and would not accommodate the ships presently calling at Bay Area terminals. Also, to accommodate the larger cargo ships now being built, ship channels and berths will have to be deepened and widened. Without this, our port industry will decline, with serious consequences to the Bay Area economy.

It is not reasonable to assume that any regulations would be established that would result in a sudden, drastic restriction of such an important economic activity. The more real danger is the gradual sapping of the economic vitality of the industry by delay and frustration involved in

the regulatory procedures.

The competitive position of Bay Area ports in relation to ports in the northwest and ports in Southern California has been seriously weakened as a result of delays in dredging projects and the uncertainty of securing dredge permits in a timely fashion. The time delays and the cumbersome procedures which presently exist with the processing of dredging permits have resulted in the waste of many thousands of dollars in public and private funds. Needless to say, this waste of funds should not be allowed to continue.

There is a growing public awareness that something has to be done about the regulatory mess which government at all levels is creating. The individuals who are out of work and can't find meaningful employment because of regulatory delays in accomplishing needed public projects are currently asking, "Why?" and "Who?" Response to this increasing awareness is evident in recent remarks by both Governor Brown and President Ford.

We would like to commend your staff on their fine report on the current status of the regulation of dredging, and we support the adoption of these findings.

After the adoption of the findings, the next logical step is to implement the necessary changes which will guarantee an overall regulatory process for dredging which is fair, reasonable, efficient and yet responsive to our environmental needs.

As a public agency with both developmental and regulatory functions, the Port of Oakland has experienced the frustrations and problems on both sides of the "regulatory fence". As final recommendations are being prepared,

we would like to share with your staff the insights we get through this dual role. We also pledge our continued support and cooperation in effectuating an efficient regulatory process for dredging permits which will eliminate the unfortunate wasting of public funds that occurs with present procedures.

This opportunity to express views on the subject of dredging regulation is certainly appreciated.



UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration
Western Region
450 Golden Gate Ave., Box 36073
San Francisco, California 94102

STATEMENT SUBMITTED BY THOMAS J. PATTERSON, JR., WESTERN REGION DIRECTOR,
MARITIME ADMINISTRATION, TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOP-
MENT COMMISSION AT A PUBLIC HEARING ON PART I OF A STUDY ON DREDGING REGU-
LATIONS, HELD BY THE COMMISSION IN SAN FRANCISCO ON AUGUST 21, 1975

It is a pleasure to have the opportunity to submit this statement to the San Francisco Bay Conservation and Development Commission in support of the Commission's efforts to study and hopefully improve dredging regulations in California.

The Maritime Administration, as an agency of the Department of Commerce, recognizes the need to dredge our navigable waterways in order to insure proper channel depths for shipping. The total waterborne commerce of the United States is steadily increasing and in recent years has had a rapid growth in terms of both tonnage and value. The value of foreign commerce moving through the ports of California alone totaled \$22.9 billion in 1974, a 50 percent increase over the \$15.3 billion in foreign trade in 1973. The economic impact generated by this commerce is great and affects the entire state and nation as well as the port community through which it passes.

Without adequate dredging of our channels and harbor areas, the movement of this commerce would be severely hindered.

In the past few years, growing public interest in protecting the environment, especially in our coastal areas, has resulted in far more regulation of activities such as dredging. The Maritime Administration is concerned about the impact on maritime industries of overly complex and burdensome regulations. Instances have occurred when the imposition of environmental



regulations alone have disrupted the smooth flow of commerce and caused economic damage.

In July 1974, a joint Maritime Administration-port industry conference was held here in San Francisco to further develop our agency's role in port promotion and development. At this conference, members of the Pacific Coast port industry asked the Maritime Administration to become more involved in their dredging regulation problems. We heard from port officials about dredging projects being unreasonably delayed and made more costly to ports in Alaska, Washington and Oregon as well as in California.

The Maritime Administration came to understand that overlapping and redundant regulations created lengthy procedures that were costly to applicants for dredging permits and at the same time failed in many instances to protect the environment.

Thus, we were pleased in September 1974 to see the passage in California of Senate Bill 2418. We agree with the Legislature's statement in the bill "...that the orderly and efficient processing of dredging permits is essential to the movement of the waterway commerce of the state ...".

Because of the Maritime Administration's interest in improving dredging regulations, we were pleased to be asked by your Executive Director, Charles R. Roberts, to participate in the Commission's study of dredging regulations. Our staff has been working with the Dredging Permit Coordinator to assist with research on commercial ports, their dredging requirements and dredging regulations in other states. We have been closely following the progress of the permit coordination procedures and the study of

dredging regulations. A thorough job is being done by the Commission on both projects.

When the projects are completed, we hope to assess the results in terms of their potential for improving dredging regulations in other parts of the country. We plan to make the results available to the port industry and other interested parties nationwide.

We are looking forward to continuing to work with the Commission on the completion of this study of dredging regulations.

I would like to thank the San Francisco Bay Conservation and Development Commission for holding a hearing on this significant study and allowing us this opportunity to submit this statement.

PORT OF
FERRY BUILDING



CITY OF SAN FRANCISCO " JOSEPH L. ALIOTO, MAYOR
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SAN FRANCISCO, CALIFORNIA 94111 • TEL.: (415) 391-8000

August 21, 1975

COMMENTS TO THE BAY CONSERVATION AND DEVELOPMENT COMMISSION

Topic: Report on Regulation of Dredging, Part I
Bay Conservation and Development Commission for
California Resources Agency

I wish to express my appreciation to the Bay Conservation and Development Commission for giving the Port of San Francisco this opportunity to comment on the recent report concerning dredging in the San Francisco Bay Area.

Last year, the Port actively assisted in the drafting and eventual passage of Senate Bill 2418, which has led to this first report on regulation of dredging prepared by your permit coordination staff.

The dredging of our waterways is vital to the overall economic well-being of the individual ports in the San Francisco Bay Area. Whereas dredging ~~may~~^{MUST} be regulated through a permit process, there exists a general consensus among the maritime interests, the ports, and the regulatory agencies that such regulations must be in the interest of protecting the environment, while maintaining the economic fiber of our communities. This can only be done with a permit process that is a balanced one between the environment and the economy; that is not dupli-

cative in nature; and that does not take months of paper work and delays to eventually get approval of what may constitute a routine maintenance dredging application.

The effort that went into this report, as well as the earlier cooperation demonstrated in the passage of Senate Bill 2418, must be continued. The goal that must be established is to create out of the present matrix of many different agencies, with many different considerations, a single permitting process that will assist not only the orderly review of such applications, but the processing of these applications within a reasonable time span.

The Port of San Francisco is a major applicant in the area of maintenance dredging. The Port dredges approximately 500,000 cubic yards a year from along our waterfront. This year, we have filed our yearly maintenance dredging permit for 500,000 cubic yards at a cost to the Port of some \$910,000. This maintenance dredging is vital to the Port's maintaining its berthside operations. Any delay in processing and approving this permit only causes the Port and its tenants to suffer major financial losses.

The normal permit period for a routine maintenance dredging application for the Port of San Francisco is one year. This year the Port made its initial contact with the Environmental Protection Agency and Regional Water Quality Control in April of 1974 for dredging to occur in 1975. To date, our applica-

tion for this maintenance dredging is still in the process stage.

This application is similar to ones that were filed and approved by these same agencies in 1973 and 1974. Still this application must go through a network of reviews and analysis as if it were an application for new dredging with major environmental impact. The Port of San Francisco, as well as other major maritime facilities or small craft harbors, cannot afford a one-year waiting period ^{or longer} to perform this type of routine maintenance dredging.

What are some of the causes for these long delays? In some of the cases, applicants submit incomplete applications or poor dredging samples; some of the delay is on the part of the agencies due to inadequate staff, unclear regulations, and conflicting federal and state guidelines. But most important, some agencies can be asked to comment on the project as many as five different times in the usual four to twelve-month period during which the applications are considered, causing unnecessary work and allowing inconsistent comments on the same project. This type of review must be stopped.

The following recommendations are offered to the report on "The Regulation Of Dredging, Part I":

1. A State and Federal system of permit coordination ^{should} be established for routine maintenance dredgings on a permanent basis to include:

- a. a requirement that each agency required to comment, review, or permit a maintenance dredging permit do so only once during the permitting process;
 - b. the establishment of a permanent "Permit Coordinating Section" within the Bay Conservation and Development Commission;
 - c. the permitting process must combine or remove such duplicative processes as public notices and public hearings on routine matters;
 - d. letters of understanding be executed between State and Federal agencies having similar responsibilities so that State agencies are considered the "lead agency" in judging the impact of any project.
2. The environmental and economic impact of routine maintenance dredging projects be studied in conjunction with the Corps of Engineers' Composite Environmental Statement so as to determine if maintenance dredging can be categorically exempt from the requirements of the California Environmental Quality Act.
 3. State agencies be granted the authority through necessary legislation to administratively approve routine maintenance dredging permits.

4. All available information relative to dredging be used to develop and maintain an overall analysis of the economic impact of dredging upon the economy of the local, regional, and state levels of government, and that such information be considered by all regulatory agencies with respect to the protection of the "public interest" of California.

I once again want to thank this Commission for taking the time to listen to our comments. I feel that the Staff of the BCDC, Permit Coordination, and particularly Mr. Tom Tobin, should be commended for their efforts.

X X X X

Jerry van de Erve
Assistant Chief Engineer

TT/kn

PORT OF OAKLAND



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July 11, 1975

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Mr. Stanley R. Euston
Chief Planner
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Draft Report on the Regulation of Dredging

Dear Mr. Euston:

For the subject draft report, I wish to offer the following comments for your consideration.

1. Maintenance Dredging

S.B. 2418 specifically singled out "maintenance dredging" as apart from "new dredging."

The draft of the Part I report did give brief recognition to and distinguished the two types of dredging projects, and under its Finding No. 12 pointed out that projects of all sizes and all types must seek approvals in basically the same manner. Therefore, it is hoped that the entire report will eventually treat the subject of maintenance dredging and its special need for an expedited permit application procedure as compared to new projects.

2. Nature and Source of Sedimentation

Many laypersons have the misconception that dredged materials are a primary source of pollution of the water. The applicant for a dredging project is, in fact, the recipient of pollutants from sources which include regional

66 Jack London Square • P.O. Box 2064 • Oakland, California, 94607 • Phone (415) 444-3188

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MEMBER OF THE AMERICAN ASSOCIATION OF PORT AUTHORITIES, INC., THE AIRPORT OPERATORS COUNCIL INTERNATIONAL, INC.
and THE INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS

OK-BW

July 11, 1975

sewage and storm water discharges, industrial wastes, both past and present, and elements of heavy metals from natural geologic processes.

The nature and source of the Bay bottom sedimentation and its pollutants are described in the draft report in a very cursory manner. The report cites 8 million cubic yards of sedimentation deposited each year due to natural erosion plus re-suspended material due to wave and current action. Professor Krone of U.C., Davis, in one of his reports estimated that the amount of dredged materials in the Bay amounts to about 1% of the natural sources.

In short, not all of the problems of evaluating dredging permits are due to the regulatory process, but is due to the decision maker's understanding of the complex nature and source of the sediments being dredged and disposed.

3. The draft report identified the domain and procedures of each of the agencies now involved in approval of dredging permit applications. The possibility exists where an applicant has coordinated and satisfied the requirements of a local board or office only to find that the recommendation of the local agency is overturned or modified. Present procedures are vague on how internal differences are to be resolved if, for example, one agency disagrees with another agency or if the State or Federal office differs from the local office. The loser, in all these cases, is the applicant.

I find the draft of the Part I report very enlightening and offer my compliments on its preparation. Please accept my appreciation for the opportunity to review same.

Sincerely,



Ben E. Nutter
Executive Director

ks

Save San Francisco Bay Association

P. O. Box 925 • Berkeley, California 94701 • (415) 849-3053

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Mr. L. Thomas Tobin, Jr.
Bay Conservation and Development Commission
30 Van Ness Avenue
San Francisco, Ca. 94102

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Re: "The Regulation of Dredging, Part 1"

Dear Tom,

I have read your preliminary report which is exceedingly well done. Some specific questions and comments follow.

Page 5: Suggest adding in paragraph 2: Since the effect on water quality and on the biota of the area involved varies according to the type of equipment, regulatory procedures should also vary.

Page 13: (end of paragraph 2) Question: Does the last sentence reflect alternatives or mitigation? They could be construed differently and the suggestion of legal interpretation without more information is confusing. Suggest the statement be enlarged in a footnote or the sentence omitted.

Page 43: (last paragraph) Suggest the last sentence end with Corps...to read "this is evidenced by the case-by-case determination done by the Corps."

With regard to Chapter VII, excellent and comprehensive questions are raised in the analysis and findings. The Association would have choices and priorities. When is the time to express these?

With regard to the "imprecise public interest:" would it be helpful to analyze this a little further at this time? For example, one "public" is frequently concerned with long-term dredging effects such as irreversible changes in marsh habitat and the amount of surface area of the Bay, another "public" is concerned with recreational boating, another "public" is primarily interested in short-term economic advantages, etc. There can be no

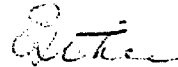
Save San Francisco Bay Association

Dredging

balancing of concerns between long and short run effects, between conflicting uses, etc. The decision cannot be a balance - it is eventually a choice. Mitigation can provide the "balance" in some cases.

The multitude of public agencies exist because they represent various public needs. In the San Francisco Bay Area the McAteer-Petris Act is an effort, under the Bay Plan, to establish criteria to protect the greatest public interest. The Association would oppose procedures which would weaken the ultimate jurisdiction of the Bay Conservation and Development Commission.

With best regards,



Esther Gulick
Advisory Board Member

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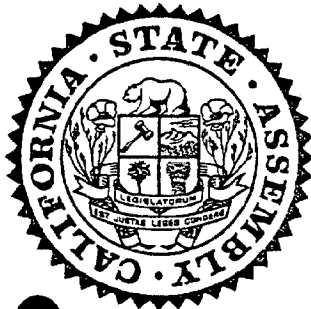
Mr. Philip S. Weismehl
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Dear Phil:

I have quickly gone over the draft of your dredging report and I have the following comments:

- p. 1 (Introduction) para. 2 -- "while the Bay is a fine natural harbor, etc."...the sandbar offshore the Golden Gate limits deep draft vessels (tankers) to 55 feet.
- p. 4, para. 1 -- "However, the effect on water quality...is not so clear," -- on page 5 you state that the effect on water quality varies according to type of equipment. If there is a difference, then we must know something about the effect.
- p. 7, para 2 -- "For this 4½ year period, the total annual volume..." Is this figure an average? The 4½ year and annual terms are confusing.
- p. 8 Table Heading should have inclusive dates. Could military dredging be included for comparison?
- p. 9 Note: material dredged from Mare Island/Vallejo area may be filling in a recently dredged berth at Standard Oil of California's Richmond Longwharf. In this case, military projects have a great impact on the rest of the Bay, requiring constant maintenance dredging.
- p. 13 para. 1 -- OPR resolves lead agency conflicts where two agencies want the lead. A problem exists where no agency wants the lead.



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OF
RESEARCH

Jim Hurst
Director
445-1638

Joan Gibson Reid
Assistant Director
445-0844

Wvian C. Nance
Assistant to Director
445-0834

Room 111
1116 Ninth Street
Sacramento 95814
(916) 445-9098

- p. 18, para. 3 -- I believe the authority to appropriate funds for the Ocean Dumping Act expired 30 June. You should check current status.
- p. 21, para 1 -- What is date of landmark case of Zabel v. Tabb?
- p. 26, (BCDC) -- Have you included the 15 May 1975 order which adopts BCDC regulations re CEQA?
- p. 32, para 1 -- A maximum and minimum time for entire permit process would be appropriate here.

* * * * *

You have done an excellent job to put this together in such a short period of time. In your recommendations you might consider the role of the Department of Navigation and Ocean Development in this area. Also consider an extended role for OPR as coordinating body and what the passage of Assembly Bill 2422 (Z'berg) - Land Use and Environment Commission - would mean.

Sincerely,

James W. Rote
JAMES W. ROTE

JWR:ls

LESLIE SALT CO.

7200 CENTRAL AVENUE, NEWARK, CALIF. 94560

JOHN M. LILLIE
PRESIDENT

July 11, 1975

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JUL 14 1975

Mr. Stan Euston
Chief Planner
San Francisco BCDC
30 Van Ness Avenue
San Francisco, CA 94102

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Dear Mr. Euston:

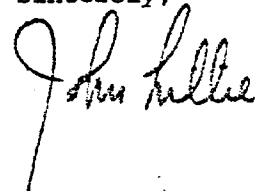
The "Draft Report on the Regulation of Dredging" does an excellent job of describing the morass of red tape encompassing the procedures for granting dredging permits. It very properly emphasizes the financial costs and time delays to the applicant.

I would suggest comments be expanded on the financial costs of time delays to the applicants since they are often carrying substantial capital and operating costs while they await permit approval. In the case of Leslie Salt Co., we have even come within days of having to close down operations due to permit approvals running well beyond any predictable or reasonable period.

You also should consider adding a section discussing the cost of these complex procedures to the taxpayer. Substantial numbers of unnecessary personnel, forms, etc. must be required at significant costs to maintain the process described in the report.

Thank you for the opportunity to review this draft.

Sincerely,



JML:eaw



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**EXECUTIVE VICE PRESIDENT
GENERAL MANAGER**
Henry Bostwick, Jr.

July 14, 1975

San Francisco Bay Conservation and Development Commission
30 Van Ness Ave.
San Francisco, Ca 94102

Re: Advisory Committee Review on
The Regulation of Dredging

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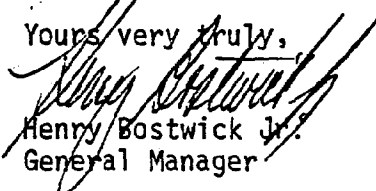
Gentlemen:

I apologize for not getting this to you sooner but I was out of town and unable to intelligently dictate anything that might be of assistance.

On reviewing this Part I of the Regulations of Dredging your Analysis and Findings correctly spell out some of the problems involved. In discussing this with some of my associates in the development field who are a bit more directly related to the entire dredging problem they expressed opinions which called for some type of coordination in the processing of applications, a standard procedure, where the applicant could have guidelines to follow and where one EIR would suffice as long as there is no substantial change in any given project. The best of all possible worlds would provide for one agency responsible for permit designations--with other state and federal agencies designating the one responsible group. This indeed would simplify the procedure which is now so completely complicated and costly that delays are inevitable and most confusing.

This probably is of little assistance to you but it does point up the need, once again, for coordination in local, state and federal offices when dealing with developers anxious to invest dollars into the economy.

Yours very truly,


Henry Bostwick Jr.
General Manager

CONSTRUCTION AGGREGATES CORP.
FRANKS DREDGING CO.
GREAT LAKES DREDGE & DOCK CO.
HEALY TIBBITTS CONSTRUCTION CO.

HYDRAULIC DREDGING CO., LTD.
PETER KIEWIT SONS' CO.
OLYMPIAN DREDGING CO.

SHELLMAKER INC.
UNIVERSAL DREDGING CO.
R. A. WATSON COMPANY
WESTERN-PACIFIC DREDGING



DREDGING CONTRACTORS ASSOCIATION of CALIFORNIA

8105 Capwell Dr.
Oakland, California 94621



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July 24, 1975

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Mr. L. Thomas Tobin, Staff Engineer
San Francisco Bay Conservation and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Subject: DRAFT REPORT ON THE REGULATION OF DREDGING

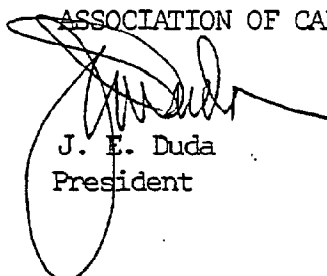
Dear Mr. Tobin:

The Draft Report accompanying your letter of July 2, 1975 has been reviewed. We feel that the report is very factual and has been assembled in a factual manner. The factor presented reflects the current conditions experienced with the processing of dredging permits.

Thank you for the opportunity to review this report. We will be pleased to cooperate in the future.

Very truly yours,

DREDGING CONTRACTORS
ASSOCIATION OF CALIFORNIA


J. E. Duda
President

JED:ss



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Division of River Basin Studies

2800 Cottage Way, Room E-2727 SAN FRANCISCO BAY CONSERVATION
Sacramento, California 95825 & DEVELOPMENT COMMISSION

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JUL 23 1975

July 25, 1975

Mr. L. Thomas Tobin, Staff Engineer
San Francisco Bay Conservation and Development Commission
30. Van Ness Avenue
San Francisco, California 94102

Dear Mr. Tobin:

We have reviewed your draft report on The Regulation of Dredging as requested in your letter of July 2, 1975. As mentioned in our verbal comments to Mr. Michael Seaman, the report appears complete and adequate. The Staff of BCDC is to be commended for the professional manner in which they are implementing Senate Bill 2418.

Sincerely yours,

Felix E. Smith
for Felix E. Smith
Field Supervisor

cc: Reg. Dir. (RB), USFWS,
Portland, Oregon



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